No. 329

IN THE

Supreme Court of the United States

October Term, 1950

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION 998, GEORGE KOECHEL, CHARLES BREHM, THOMAS MURACH, RAYMOND KNUTSON, JACK WERY, JOE DERSINZSKI, HOWARD LYNCH, HERMAN WEBER, PAUL BREHM, PAUL KRAFT, STEVE MALICK, WILLIAM BUCHE, GEORGE SLOAN, EDWIN BECKER AND OTHMAR MISCHO,

Petitioners,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD,

Respondent.

ON APPEAL FROM THE SUPREME COURT OF WISCONSIN

BRIEF FOR THE COMMONWEALTH OF PENNSYLVANIA AMICUS CURIAE

GEORGE L. REED, *Solicitor, Pennsylvania Labor Relations Board,*
M. LOUISE RUTHERFORD, *Deputy Attorney General,*
CHARLES J. MARGIOTTI, *Attorney General,*
Attorneys for the Commonwealth of Pennsylvania.

State Capitol
Harrisburg, Pennsylvania.

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No. 329

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1950

Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 998, George Koechel, Charles Brehm, Thomas Murach, Raymond Knutson, Jack Wery, Joe Dersinzski, Howard Lynch, Herman Weber, Paul Brehm, Paul Kraft, Steve Malick, William Buche, George Sloan, Edwin Becker and Othmar Mischo,

Petitioners,

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Wisconsin Employment Relations Board,

Respondent.

ON APPEAL FROM THE SUPREME COURT OF WISCONSIN.

BRIEF FOR THE COMMONWEALTH OF PENNSYLVANIA, AMICUS CURIAE

I. OPINION OF THE COURT BELOW

The opinion of the Supreme Court of the State of Wisconsin is reported in 257 Wis. 43, 42 N.W. 2d 471 (1950).

II. STATEMENT AS TO JURISDICTION

The jurisdiction of this court has been invoked under Section 1257 (3) of Title 28, U.S.C.

III. QUESTIONS PRESENTED

The only questions discussed in this brief are:

1. Whether Sections 111.50 to 111.65, subchapter III of Chapter III of the Wisconsin Statutes for 1949 are unconstitutional and void on the ground that these sections are repugnant to and in conflict with the Labor-Management Relations Act of 1947?

2. Do Sections 111.50 to 111.65 of subchapter III of Chapter III of the Wisconsin Statutes for 1949 constitute an unconstitutional encroachment upon the power of the Federal Government?

IV. STATUTES INVOLVED

The relevant provisions of the Labor-Management Relations Act of 1947 (Act of June 23, 1947), Public Law 101, 80th Congress, First Session, 29 U.S.C.A. 151 et seq., and the relevant provisions of Section 111.50 to 111.65, subchapter 111 of Chapter III of the Wisconsin Statutes for 1949 are printed in the appendix of the brief of the Respondent, Wisconsin Employment Relations Board.

V. STATEMENT OF THE CASE

The facts of the case as stated by the Court below are as follows:

This action was commenced January 4, 1949, by the Wisconsin Employment Relations Board against the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Division 998, and certain individual defendants who were officers or members of the general executive board of said association, perpetually to restrain and enjoin them from calling a strike or causing an interruption of the public passenger service of the Milwaukee Electric Railway and Transport Company in the state of Wisconsin. The pleadings consisted of the plaintiff's complaint and amended complaint, the answer of the defendants, and a reply to the answer by the plaintiff. Plaintiff moved for judgment on the pleadings, and the motion was granted. Defendants appeal from the judgment entered on April 11, 1949, of the Circuit Court of Milwaukee County, Wisconsin, granting the injunction prayed for in the amended complaint.

On appeal, the Supreme Court of Wisconsin on May 2, 1950, issued a decision and order affirming the judgment of the Circuit Court of Milwaukee County.

On November 6, 1950, petition for writ of certiorari to the Supreme Court of Wisconsin was granted by Your Honorable Court: **Amalgamated Association of Street Electric Railway and Motor Coach Employes of America, Division 998 et al. v. Wisconsin Employment Relations Board,** 71 S. Ct. 124.

VI. INTEREST OF THE COMMONWEALTH OF PENNSYLVANIA

Pennsylvania has a statute which is very similar to Sections 111.50 to 111.65 of Subchapter III of Chapter III for 1949, which is to be found in 43 P.S., sections 213.1 to 213.16 (pocket part). The purpose of this statute, as declared in its title, is:

> "To provide for the prompt, peaceful and just settlement of labor disputes between public utility employers engaged in furnishing electric, gas, water and steam heat services to the public and their employes which cause or threaten to cause strikes, lockouts, slowdowns or similar work stoppages and consequent interruptions in the supply of a public utility service on which a community served is so dependent that severe hardship would be inflicted on a substantial number of persons by a cessation of such service; providing procedures for the adjustment and settlement of such disputes; declaring that the public policy of the Commonwealth requires the continuation, without cessation

of such public utility services; and providing means, including regulations, affecting the rights, powers and privileges of employers and employes for the enforcement of such public policy, and providing penalties."

There has been no judicial review of this statute by any court.

Without conceding that a judgment of unconstitutionality of any part of the Wisconsin statute in the instant case would likewise invalidate the Pennsylvania statute or any part thereof, nevertheless such a judgment might easily be held to have a like application to the Pennsylvania statute.

Wherefore, Pennsylvania, like Wisconsin, has a vital interest in the question whether Sections 111.50 to 111.65, Subchapter III of Chapter III of the Wisconsin Statutes for 1949 are unconstitutional and void as being repugnant to and in conflict with the Labor-Management Relations Act of 1947 and whether they constitute an unconstitutional encroachment upon the power of the Federal Government.

VII. SUMMARY OF ARGUMENT

Congress designedly left open an area for state control in enacting the Labor-Management Relations Act of 1947.

The powers still reside in states in a proper case to prohibit strikes notwithstanding the existing Federal legislation.

Approximately twelve states have enacted statutes compelling arbitration of labor disputes affecting public utilities and in three of these states, Michigan, New Jersey and Wisconsin, the constitutionality of the statutes has been sustained by the highest appellate courts as against the contention that the statutes are unconstitutional on the ground that they are repugnant to and in conflict with the Labor-Management Relations Act of 1947 or that they constitute an unconstitutional encroachment upon the power of the Federal government. In reaching this conclusion, reliance has been placed upon **International Union, etc. v. Wisconsin Employment Relations Board,** 336 U. S. 245 (1949), stating that neither common law nor the 14th amendment confers the absolute right to strike and

that dissenting views most favorable to labor in other cases have conceded the right of the state legislature to mark the limitation of tolerable industrial conflict in the public interest.

Likewise reliance is placed upon **Lincoln Federal Labor Union No. 19129 American Federation of Labor et al. v. Northwestern Iron & Smelting Co. et al.,** 335 U. S. 25 (1949) holding that the due process clause is not to be so broadly construed that the Congress and state legislation are put in a strait jacket when the attempt to suppress public and industrial conditions which they regard as offensive to the public welfare.

The Wisconsin statutes under consideration cannot be held to constitute an unconstitutional encroachment upon the power of the Federal government unless Congress has occupied the field and closed it to state regulation or very real potentials of conflict exist which will induce the allowance of supremacy to the Federal scheme even though it has not been applied in any formal way to the labor dispute under consideration. Both **International Union of United Automobile, Aircraft and Agriculture Employment Workers of America, C.I.O., et al. v. O'Brien,** 70 S. Ct. 781 (1950), and **LaCrosse Telephone Corporation,** 336 U. S. 18 (1949), are to be

distinguished on their facts from the instant case.

Under all the relevant authorities the judgment of the Supreme Court of Wisconsin should be affirmed.

VIII. ARGUMENT

There is nothing in the Labor-Management Relations Act of 1947 expressing an intent of Congress that jurisdiction over utility companies and their employes shall be exclusive, nor is there any provision to meet a community emergency. Hence the rule of federal construction applicable to the instant case is that stated by Chief Justice Hughes in **Kelly v. State of Washington**, 302 U.S. 1, 9, 10 (1937). (Boldface ours.)

> "Under our constitutional system, there necessarily remains to the states, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. * * * There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. **The principle is thoroughly established that the exercise by the state of its police power, which would be valid if not**

superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot be 'reconciled or consistently stand together.' "

Approximately twelve states have enacted statutes compelling arbitration of labor disputes affecting public utilities. The constitutionality of the statutes of Michigan, New Jersey and Wisconsin have been affirmed by the highest courts of these states, as against the contention of the petitioner in the instant case that the statutes are unconstitutional on the ground that they are repugnant to and in conflict with Labor-Management Relations Act of 1947 or that they constitute an unconstitutional encroachment upon the power of the Federal Government.

See **Local 170, Transport Workers Union of America, C.I.O., et al. v. Gadola Circuit Judge, et al.**, 322 Mich. 332, 34 N.W. 2d 71 (1948);

State v. Traffic Telephone Workers' Federation of New Jersey, et al., 2 N.J. 335, 66 A. 2d 616 (1949);

United Gas, Coke & Chemical Workers of America, Local 18, C.I.O., et al. v. Wisconsin Employment Relations Board, et al., 38 N.W. 2d 692 (1949).

In **Local 170, Transport Workers Union of America, C.I.O., et al., v. Gadola Circuit Judge, et al.**, supra, it was said by Chief Justice Bushnell of Michigan, on pages 75, 76, after citing many decisions of Your Honorable Court, that (Boldface ours):

> **"So considered, there is left but little room for the view that, under Federal constitutional limitations, State legislation substituting even compulsory arbitration for economic 'trial by battle' in the case of public utilities * * * constitutes an arbitrary and unreasonable interference with the liberty of the individuals concerned or the property rights of employer and employee."**

It was said by Mr. Justice Jackson in **International Union, etc., v. Wisconsin Employment Relations Board**, 336 U.S. 245, 252, 253 (1949) (Boldface ours):

> **"Congress has not seen fit in either of these Acts (the National Labor Relations Act of 1935 or the Labor-Management Relations Act of 1947) to declare either a general policy or to state specific rules as to their effects on state regulation of various phases of labor relations over which the**

> **several states traditionally have exercised control. * * * However, as to coercive tactics in labor controversies, we have said of the National Labor Relations Act what is equally true of the Labor-Management Act of 1947. That 'Congress designedly left open an area for state control' and that 'the intention of Congress to exclude states from exerting their police power must be clearly manifested.' * * * "**

Likewise, in a dissenting opinion in the case last cited, it was said by Mr. Justice Douglas at page 267 (Boldface ours):

> **"It is the presence of a conflicting federal policy that determines whether state action must give way under the Supremacy Clause, even though there may be no actual or potential collision between federal and state administrative agencies. * * * "**

In **State v. Traffic Telephone Workers' Federation of New Jersey**, supra, it was said by Chief Justice Vanderbilt of New Jersey at page 625, that (Boldface ours):

> **"Thus the power still resides in the States in a proper case to prohibit strikes notwithstanding the existing Federal Legislation."**

In reaching this conclusion, reliance was placed upon **International Union, etc., v. Wisconsin Employment Relations Board,** supra, where it was said by Mr. Justice Jackson at page 524, that (Boldface ours):

> "* * * **This Court less than a decade earlier had stated that law to be that the state constitutionally could prohibit strikes and make a violation criminal.** It had unanimously adopted the language of Mr. Justice Brandeis that **'Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike.'** Dorchy v. State of Kansas, 272 U.S. 306, 311, 47 S. Ct. 86, 87, 71 L. Ed. 248. **Dissenting views most favorable to labor in other cases had conceded the right of the state legislature to mark the limits of tolerable industrial conflict in the public interest.** Duplex Printing Press Co. v. Deering, 254 U.S. 443, 488, 41 S. Ct. 172, 184, 65 L. Ed. 349, 16 A.L.R. 196. This Court has adhered to that view. Thornhill v. State of Alabama, 310 U.S. 88, 103, 60 S. Ct. 736, 744, 745, 84 L. Ed. 1093. * * *"

The conclusion of Chief Justice Vanderbilt of New Jersey in **State v. Traffic Telephone Workers' Federation of New Jersey,** supra, that:

"The power still resides in the States in a proper case to prohibit strikes notwithstanding the existing Federal Legislation, has the support of Your Honorable Court in **Lincoln Federal Labor Union No. 19129 American Federation of Labor et al. v. Northwestern Iron & Smelting Co. et al.**, 335 U.S., 525 (1949), wherein it was said by Mr. Justice Black at page 536, that (Boldface ours):

> "This Court beginning at least as early as 1934, when the Nebbia case (291 U.S. 502) was decided, has steadily rejected the due process philosophy enunciated in the Adair-Coppage line of cases. **In doing so it has consciously returned closer and closer to the earlier constitutional principle that states have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law.** See Nebbia v. New York, supra, 291 U.S. at pages 523, 524, 54 S. Ct. at pages 509, 510, 78 L. Ed. 940, 89 A.L.R. 1469, and West Coast Hotel Co. v. Parrish, supra, 300 U.S. at pages 392-395, 57 S. Ct. at pages 582, 583, 81 L. Ed. 703, 108 A.L.R. 1330, and cases cited. **Under this constitutional doctrine the due process**

> **clause is no longer to be so broadly construed that the Congress and state legislatures are put in a strait jacket when they attempt to suppress business and industrial conditions which they regard as offensive to the public welfare."**

Clearly, therefore, the Wisconsin Statute under consideration cannot be held to constitute an unconstitutional encroachment upon the power of the Federal Government unless Congress has occupied the field and closed it to state regulation:

> **International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., et al. v. O'Brien,** 70 S. Ct. 781 (1950),

or very real potentials of conflict exist which will induce Your Honorable Court to allow supremacy to the Federal scheme even though it has not been applied in any formal way to the labor dispute:

> **La Crosse Telephone Corporation,** 336 U.S. 18 (1949).

In the **La Crosse Telephone Corporation** case, the Wisconsin Statute provided that the state agency could certify a collective bargaining agent for employes under a different and con-

flicting theory of representation from the policy proclaimed in the Federal Statute. It was held that to permit certification of a bargaining representative by the Wisconsin agency might be as readily disruptive of the practice under the Federal Statute as if the orders of the two boards made a head-on collision. It was said by Mr. Justice Douglas at pages 9, 10, that "These are the very real potentials of conflict which lead us to allow supremacy to the Federal scheme even though it has not yet been applied in any formal way to this particular employer".

This case is to be distinguished from the instant case for a two-fold reason: (1) No bargaining agent is selected or certified. Collective bargaining and the process of mediation and arbitration are enforced between an employer and an existing representative of employes in a unit which has either been certified by the labor board having jurisdiction or in a unit which has been agreed to by the parties. In the second place, the National Labor Relations Board has not been authorized by Congress to forbid a strike or other industrial dispute, where, as under the Wisconsin Statute, irreparable injury to the public health and welfare is imminent or threatened. Regulation under these circumstances is left wholly to the states.

In **International Union of United Automobile, Aircraft and Agricultural Workers of America, C.I.O., et al. v. O'Brien,** supra, it was said by Chief Justice Vinson at page 783, that (Boldface ours):

> **"Without question, the Michigan provision conflicts with the exercise of federally protected labor rights. A state statute so at war with federal law cannot survive."**

Also at page 784, Chief Justice Vinson said (Boldface ours):

> "* * * Clearly, we reaffirmed the principle that if 'Congress has protected the union conduct which the state has forbidden * * * the state legislation must yield.' 336 U.S. at page 252, 69 S. Ct. at page 520. **That principle is controlling here."**

The case last cited is to be distinguished on its facts from the instant case for many reasons. In the first place, it was found that under the Michigan Statute, which was declared unconstitutional in part, the bargaining unit established in accordance with the Federal Law might be inconsistent with that required by the state regulation. It seems certain that a possible conflict in bargaining units cannot exist in the instant case.

It is because the operations of public utilities, as stated by the trial court, "Have long been subject to scrutiny by regulatory bodies set up by the state to protect the rights of the public", and because the Wisconsin Statute makes it an unfair labor practice for an employee to engage in concert with others to coerce or intimidate an employee in the enjoyment of his legal rights; to cooperate in engaging, promoting or reducing picketing unless a majority in a collective bargaining unit vote to call a strike or to take unauthorized possession of property of employer, or to engage in any considered effort to interfere with production, except by leaving the premises in an orderly manner for the purpose of going on strike, that the procedure outlined by the Wisconsin Statute does not conflict with the commerce clause or with the National Labor Relations Act or the Labor-Management Relations Act of 1947.

The case now being discussed is to be distinguished because as was said by Mr. Justice Jackson in **International Union, etc., v. Wisconsin Employment Relations Board**, supra, at page 524 (Boldface ours):

> "* * * **The right to strike, because of its more serious impact upon the public interest, is more vulnerable to regulation than**

> **the right to organize and select representatives for lawful purposes of collective bargaining which this Court has characterized as a 'fundamental right' and which, as the Court has pointed out, was recognized as such in its decisions long before it was given protection by the Labor Relations Act.** National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 U.S. 1, 33, 57 S. Ct. 615, 622, 81 L. Ed. 893, 108 A.L.R. 1352."

Furthermore, the unconstitutionality of the strike vote provision of the Michigan labor mediation law was predicated upon the theory expressed by Senator Taft (93 Cong. Rec. 3835 (1947)) that there is a right to strike and that labor peace must be based on free collective bargaining. He added that, "We (the Congress) have done nothing to outlaw strikes for basic wages, hours and working conditions after proper opportunity for mediation." And Your Honorable Court concluded that none of the relevant sections of the Federal statute "can be read as permitting concurrent state regulation of peaceful strikes for higher wages.

The labor disputes regulated by the Wisconsin statute are of a different character. This statute is not concerned merely with peaceful strikes for

higher wages. Section 111.50 recognizes the fact that the interruption of public utility service results in damage and injury to the public wholly apart from the effect upon the parties immediately concerned and creates an emergency justifying action which adequately protects the general welfare. Section 111.62 makes the "strike" coming within the purview of the statute a misdemeanor, in recognition of the serious threat to the public welfare of a strike among the employes engaged in the business of furnishing water, light, heat, gas, electric power, public passenger transportation or communication to the public of Wisconsin. Surely it was not the intent of Your Honorable Court to reverse the rule repeatedly announced since **Duplex Printing Press Co. v. Deering,** 254 U.S. 443 (1921) that a state legislature may mash the limits of tolerable industrial conflict in the public interest.

In addition, the attempt was made to apply the Michigan statute to a manufacturing corporation having plants in California and Indiana as well as Michigan. There was a federally certified bargaining representative for the bargaining unit covering the three states, although the unit for the Michigan strike vote could not extend beyond Michigan's voters. Herein, certainly, were the real potentials of conflict to suggest supremacy of Federal regulation.

It is urged, therefore, that the instant case
to be distinguished on its facts from **La Cross
Telephone Corporation v. National Labor Rela
tions Board**, supra, and **International Union
United Automobile, Aircraft and Agricultura
Workers of America, C.I.O., v. O'Brien**, supra
and that upon the authorities cited in this brief
the Judgment of the Supreme Court of Wiscon
sin should be affirmed.

Respectfully submitted,

GEORGE L. REED,
*Solicitor, Pennsylvania Labor
Relations Board,*

M. LOUISE RUTHERFORD,
*Deputy Attorney General of
Pennsylvania,*

CHARLES J. MARGIOTTI,
*Attorney General of Pennsyl
vania.*

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Supreme Court of the United States

OCTOBER TERM, 1950

No. 438

UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, CIO, ARTHUR ST. JOHN, THOMAS LANSING, AND AL FUHRMAN, PETITIONERS,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

PETITION FOR CERTIORARI FILED DECEMBER 6, 1950.

CERTIORARI GRANTED DECEMBER 11, 1950.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 438

UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, CIO, ARTHUR ST. JOHN, THOMAS LANSING, AND AL FUHRMAN, PETITIONERS,

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WISCONSIN EMPLOYMENT RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 18, 1950.

[fols. 1-101]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

DECISION—March 14, 1950

This proceeding is before the court upon the petition of plaintiff, Wisconsin Employment Relations Board, for an order to show cause why defendant, United Gas, Coke & Chemical Workers of America, District 7, Local Union 18, Arthur St. John, Chester Walczak and Thomas Lansing and other respondents named in the petition should not be punished as and for civil contempt for "failure to obey and disobeying the order of this court issued on the 5th day of October, 1949," ordering defendants "to absolutely desist and refrain from calling a strike, going out on strike or causing any work stoppage or slowdown which would cause an interruption of the service of the Milwaukee Gas Light Company or the Milwaukee Solvay Coke Company and from instigating, inducing, conspiring with or encouraging any strike, slowdown or work stoppage which would cause interruption of such service, and from picketing or causing to be picketed the premises of the Milwaukee Solvay Coke Company"; and further ordering

"The defendants, The United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C.I.O., Arthur St. John, Chester Walczak and Thomas Lansing, take immediate steps to notify all employes called out on strike to resume service forthwith."

The main above entitled action is brought pursuant to subchapter III of Chapter 111, Wisconsin stats.

[fol. 102] Subchapter III of Chapter 111, Wisconsin stats. provides:

> "It is hereby declared to be the public policy of the state that it is necessary and essential in the public interest to facilitate the prompt, peaceful and just settlement of labor disputes between public utility employers and their employes which cause or threaten to cause an interruption in the supply of an essential public utility service to the citizens of this state and to that end to encourage the making and maintaining of agreements concerning wages, hours and other conditions

of employment through collective bargaining between public utility employers and their employes, and to provide settlement procedures for labor disputes between public utility employers and their employes where the collective bargaining has reached an impasse and stalemate and as a result thereof the parties are unable to effect such settlement and which labor disputes, if not settled, are likely to cause interruption of the supply of an essential public service. The interruption of public utility service results in damage and injury to the public wholly apart from the effect upon the parties immediately concerned and creates an emergency justifying action which adequately protects the general welfare."

The term "Public Utility Employer" is defined by section 111.51 as follows:

"'Public utility employer' means any employer (other than the state of any political subdivision thereof) engaged in the business of furnishing water, light, heat, gas, electric power, public passenger transportation or communication, or any or more of them, to the public in this state. This subchapter does not apply to railroads or railroad employes."

[fol. 103] "'Essential service' means furnishing water, light, heat, electric power, public passenger transportation or communication, or any one or more of them, to the public in this state."

It is provided by Subsection 111.61 (3) as follows:

"The board shall have the responsibility for enforcement of compliance with the provisions of this subchapter and to that end may file an action in the circuit court of the county in which any such violation occurs to restrain and enjoin such violation and to compel the performance of the duties imposed by this subchapter. * * *"

It is the contention of defendants that Chapter 111 of the laws of Wisconsin and the subchapter just referred to are unconstitutional and in conflict with the National Labor Relations Act as amended by the National Labor Relations Act of 1947.

It is contended by plaintiff that the judgment in the declaratory judgment action brought by the Union in Milwaukee County circuit court in September, 1948, is res adjudicata as to the constitutionality and validity of Chapter 111, Wisconsin stats. The amended complaint in the declaratory judgment action alleged that the Union brought the action as the representative of the employes of the Milwaukee Gas Light Company; that defendant company is a public utility corporation and that the Wisconsin Employment Relations Board claims jurisdiction of the Company and the Union with the right to enjoin and restrain the Union and its members from quitting in concert to call a strike or go out on [fol. 104] strike or cause any work stoppage and alleged that subchapter III of Chapter 111 of the Laws of 1947 is unconstitutional and in conflict with the Thirteenth Amendment to the Constitution of the United States.

Defendants in the declaratory judgment action interposed general demurrers to plaintiff's amended complaint. After trial of the action upon issues raised by demurrers to the complaint, the following judgment was rendered:

> "It is hereby adjudged and determined that Chapter 414, Laws of 1947, being Subchapter III of Chapter 111 of the Wisconsin Statutes, 1947, is a valid and constitutional act, and does not violate nor conflict with any of the provisions of the Constitution of the State of Wisconsin, nor with any of the provisions of the Constitution of the United States, nor with any amendment thereto, and does not conflict with the United States Labor-Management Relations Act of 1947, and does not deny to the plaintiffs nor to any of the employes of the defendant Milwaukee Gas Light Company represented by them, and does not deprive them of any rights, privileges or protection secured to them under either of said constitutions or act of Congress; and that the plaintiffs, the defendant Milwaukee Gas Light Company, and its employes represented by the plaintiffs herein, are subject to and controlled by said Subchapter III of Chapter 111 of the Wisconsin Statutes, 1947.
>
> "It is further adjudged that the prayer of the plaintiffs in the above entitled action for further relief be and the same hereby is denied."

This judgment of the circuit court of Milwaukee County was affirmed by the Supreme Court of Wisconsin on July

[fol. 105] 12, 1949. (United G. C. & C. Workers vs. E. R. Board, 255 Wis., 154.)

The purposes in the declaratory judgment action and in this proceeding are the same. The issues here raised with respect to the constitutionality and with respect to an alleged conflict with the National Labor Relations Act were litigated and decided in the declaratory judgment action. The judgment in the declaratory judgment action involving the same parties and the same issues is res adjudicata and is final and conclusive adjudication upon the question of the validity of Subchapter III of Chapter 111 of the Wisconsin statutes and precludes respondents from raising the same issue in the present proceeding.

Milwaukee Automobile Ins. Co. Limited Mutual vs. Felton (1939), 229 Wis. 29.

Montpelier Sav. Bank & Trust Co. vs. School Dist. 5, Town of Ludington (1902), 115 Wis., 622.

The rule is well established that a judgment sustaining a demurrer is an adjudication upon the merits.

Northern Pacific Railway vs. Slaght, 205 U. S. 122.

It is well established that a judgment on demurrer is as conclusive as one rendered upon proof.

Gould vs. Evansville & Crawfordsville R. R. Co., 91 U. S. 526.

Bissel vs. Spring Valley Township, 124 U. S. 228; Freeman on Judgments, Sec. 267.

[fol. 106] In Ellis vs. The Northern Pacific Railroad Company, 80 Wis., 459, the rule is stated as follows:

> "* * * It is sufficient to say that by repeated decisions it has become the settled law in this state that the decision of this court upon a demurrer is conclusive upon the questions legitimately involved, and is res adjudicata in that case."

The general rule applicable to actions brought in a representative capacity is stated as follows in 30 Am. Jur., Judgments, Section 228, page 962:

> "* * * While the general rule is that no person is bound by a judgment except those who are parties or stand in privity with others who are parties, there is

> an exception to the rule, of equal authority with the rule itself, in the case of persons who are virtually represented by persons on the record as parties. In such case, a judgment in favor of the parties representing the general class is operative under the doctrine of res adjudicata in favor of all who are thus represented, and a judgment against the parties representing the general class is operative against those represented. This doctrine does not depend upon statutory provisions; it is a rule of common law, founded on convenience and necessity. It is based upon the theory that the persons joined and not joined have a common interest, that the parties joined may be depended upon to bring forward the entire merits of the controversy as a protection to their own interests, and that the persons not joined as parties are sufficiently represented by those who are joined. * * *"

In Warner vs. Trow, 36 Wis., 195, the rule is stated as follows:

> "* * * In order to give full effect to the rule that the judgment of a court of competent jurisdiction is [fol. 107] final and conclusive upon the rights of the parties touching the subject matter of the suit, not only the parties themselves are held to be bound, but also all persons who are represented by the parties, and claim under them, or in privity with them, must be equally concluded by it. * * *"

It must, therefore, be determined that Subchapter III of Chapter 111, Wisconsin stats. is a valid and constitutional law and does not violate any of the provisions of the Constitution of the state of Wisconsin or of the Constitution of the United States and is not in conflict with the National Labor Relations Act of 1947.

The testimony is undisputed that prior to October 5, 1949, the membership of the Union had authorized the Negotiating Committee to call a strike and on August 4, 1949, the Negotiating Committee, consisting of defendants, Arthur St. John and Thomas Lansing, and Alvin C. Fuhrman, ordered the strike to commence at 6:00 o'clock A. M. October 5, 1949. At 11:00 o'clock A. M. the public was advised to curtail consumption of gas and an appeal to consumers of gas was

made to shut off the service; the steam pressure dropped to zero in the boiler room and no further pumping could be done with the main pumping facilities; the fires had to be pulled from the boilers reducing the steam pressure and all facilities had to be stopped; a minimum pressure in the distribution system was kept in order that air would not get into the mains so as to prevent any explosions due to the mixture of gas and air in the distribution system; the sendouts dropped to 25 percent of what they had been previously. It was testified that low pressure in the system [fol. 108] created a dangerous condition fraught with the possibility of infinite injury to the public. The public was advised by radio broadcasts and through the newspapers to shut off appliances and to shut off the service at the meter. The service was not resumed until October 6, 1949.

The restraining order here under consideration was signed by the Court at 12:55 o'clock P. M. and was served by the deputy sheriff upon the Union by serving its president, Arthur St. John, and upon him personally and upon respondent, Chester Walczak, at a meeting of a large group of members of the Union at Bohemian Hall at about 2:00 o'clock P. M. October 5th. Chester Walczak and Arthur St. John told the meeting the papers served were an order to go back to work. No statement was made, however, by Chester Walczak or Arthur St. John at that meeting calling the men back to work. A picket line was formed at Milwaukee Solvay Coke Company at about 2:00 or 3:00 o'clock P. M. and continued there until 9:30 o'clock P. M. Wednesday, October 5, 1949.

It should be stated that defendants contend that the Milwaukee Coke Company is not a public utility and that, therefore, Subchapter III of Chapter 111 does not apply to it. The fact is, however, that in October, 1949, the Coke Company supplied from fifty-five to sixty percent of the gas distributed by the Gas Company. It was also testified and is undisputed that the Coke Company at other times supplied from fifty to eighty percent of the base load of gas. It was further testified that the distribution of gas [fol. 109] by the Milwaukee Gas Light Company to consumers in the Milwaukee area could not continue without a supply of gas from the Coke Company. Further, the testimony relating to the corporate relationship between the Milwaukee Gas Light Company and the Milwaukee Solvay Coke Company shows that the Milwaukee Gas Light Com-

pany owns one hundred percent of the stock of the Milwaukee Coke Company.

It must be held and it is so determined that because of the relationship between the Coke Company and the Gas Company, the Coke Company is a public utility within the statutory definition contained in Subchapter III of Chapter 111 (section 111.51).

Any determination of the issue now before the Court upon the petition of the plaintiff herein must be without regard to the merits of the controvery between the Milwaukee Gas Light Company, employer, and the defendant Union and of course any consideration of the merits of such controversy is wholly irrelevant to the proceeding now before the court.

The restraining order signed by the Court on October 5, 1949, was served and became effectual subsequent to the action of the Negotiating Committee calling the strike for 6:00 o'clock A. M. on October 5th. Therefore it can relate only to matters occurring subsequent to the issuance and service of the order. The strike, prior to the service of the order, had been voted upon by the membership of the Union and called by the Negotiating Committee as directed by the vote of the Union. The present proceeding therefore does [fol. 110] not relate back to the action of the Union, voting the strike or the act of the Negotiating Committee calling the strike for 6:00 o'clock A. M. on October 5th; but does relate to matters occurring subsequent to the signing of the order and the service of the same at 2:00 o'clock P. M. on October 5th. As already indicated, the order required defendants Union, Arthur St. John, Alvin C. Fuhrman and Thomas Lansing "to take immediate steps to notify all employees called out on strike to resume service." The order required immediate compliance because of the serious situation herein referred to resulfing from the partial or complete stoppage of the essential service of furnishing gas to the public. On Arthur St. John, president of the Union and a member of the Negotiating Committee, Thomas Lansing, a member of the Executive Board of the Union and a member of the Negotiating Committee, and Alvin C. Fuhrman, vice-president of the Union and a member of the Executive Board and of the Negotiating Committee, was placed the responsibility by vote of the Union to call the strike and upon them rested the responsibility, after the

service of the restraining order, to revoke such call and comply with the order of the court. Failure to do so was a clear and distinct violation of the order of the court served upon defendants at two o'clock P. M. October 5, 1949. Their belief that such a call to the members of the Union to return to work would have been ineffectual by no means constitutes a justification for their failure to comply with the requirements of the court order.

[fol. 111] The law which plaintiff seeks to enforce may be controversial but until repealed or amended, it is the law and as indicated by the Attorney General "proper respect cannot be obtained for this law or any other or for the government itself unless such demands of the court are obeyed."

The Attorney General rightfully urges that the court should not be motivated by vindictiveness but that penalties "must be imposed which are adequate to make it plain that parties who disobeyed the order were in the wrong when they did so."

It is adjudged that the defendants, Arthur St. John, Thomas Lansing and Alvin C. Fuhrman, officers of the defendant Union and members of the Negotiating Committee, upon whom rested the responsibility of calling the strike, were guilty of wilful and contumacious civil contempt in failing to carry out the order of the court "to take immediate steps to notify all employees called out on strike to resume service forthwith."

And it is adjudged that defendant Arthur St. John, pay a fine in the sum of Two Hundred Fifty ($250.00) Dollars or in the event of his failure so to do that he be committed to the County Jail of Milwaukee County for a period of two months under the Huber Law.

It is further adjudged that defendant Thomas Lansing, pay a fine in the sum of Two Hundred Fifty ($250.00) Dollars or in the event of his failure so to do that he be committed to the County Jail of Milwaukee County for a period of two months under the Huber Law.

[fol. 112] It is further adjudged that defendant Alvin C. Fuhrman, pay a fine in the sum of Two Hundred Fifty ($250.00) Dollars or in the event of his failure so to do that he be committed to the County Jail of Milwaukee County for a period of two months under the Huber Law.

And it is further adjudged that the defendant Union pay a fine of Two Hundred Fifty ($250.00) Dollars.

Defendant, Chester Walczak, at the time in question was a Regional Director of the International Union but he was not a member of the Negotiating Committee and upon him did not rest the immediate duty to recall the strike as it did upon the members of such Negotiating Committee. His failure to disassociate himself from the continuance of the strike does not clearly appear to have been an act of wilful and contumacious civil contempt and the Court, therefore, finds that he was not guilty of wilful and contumacious civil contempt and the present proceeding for contempt is therefore dismissed as to him.

As to the other respondents named in the present proceeding to punish for civil contempt, the evidence does not sufficiently and clearly establish their knowledge of the scope and requirement of the court order, largely due to the failure of members of the Negotiating Committee to sufficiently inform the workers on the picket line of the requirements of such order.

The Court is of the opinion that the fact of wilful and contumacious civil contempt as to the other respondents has [fol. 113] not been clearly established and as to them the petition to punish for civil contempt is dismissed.

A suitable order conforming with this decision shall be prepared by the Attorney General and submitted to this court for its signature.

Dated, Milwaukee, Wisconsin, this 14th day of March, 1950.

Otto H. Breidenbach, Circuit Judge.

Cover.

Decision on motion—93 to 97.

In Circuit Court of Milwaukee County

Findings of Fact and Conclusions of Law

The order of this court requiring the United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Thomas Lansing, Alvin Fuhrman, Peter Lupo, Charles Nutting, Al Helf, Cy Hackert, Ray Jonas, Charles Bauer, Al Smidoch, Peter Shank, Dan Burns, Joe Seborn, Dan Kabosky, Joe Marquardt, Fred Stockfish, and Chester Walczak, to show cause why they and each of them should not be

punished as for a civil contempt in failing to obey and disobeying the order of this court issued on the 5th day of October, 1949, having come on to be heard on the 16 and 17 days of January, 1950, before the Circuit Court of Milwaukee County, Branch No. 1, Honorable Otto H. Breiden-[fol. 114] bach presiding, and the petitioner appearing by Thomas E. Fairchild, Attorney General, and Beatrice Lampert, Assistant Attorney General, and the respondents appearing by Max Raskin and William Quick, and the court having heard the evidence and being fully advised in the premises, does hereby make the following findings of fact and conclusions of law:

Findings of Fact

1. That the order of this court issued in this proceeding on October 5, 1949, was duly served upon the respondents, United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, and Arthur St. John and each of them at about 2:00 o'clock in the afternoon on Wednesday, October 5th during a meeting of said Local 18 at Bohemian Hall in the City of Milwaukee, Milwaukee County, Wisconsin; (that said order was also served upon the respondent, United Gas, Coke and Chemical Workers of America, District 7, Local Union 18 by service at about 3 o'clock P. M. of said day upon members of the picket line established by said local before the premises of the Milwaukee Solvay Coke Company in said City of Milwaukee;) and that the respondent, Thomas Lansing, had notice that an order had been issued at about 3:00 o'clock in the afternoon of said day.

2. That said order commanded that the respondents named absolutely desist from calling a strike, going out on strike or causing any work stoppage or slowdown which would cause an interruption of the service of the Milwaukee Gas Light Company or the Milwaukee Solvay Coke Com-[fol. 115] pany and from instigating, inducing, conspiring with or encouraging any strike, slowdown or work stoppage which would cause an interruption of such service; absolutely desist from picketing or causing to be picketed the premises of said Milwaukee Solvay Coke Company; and take immediate steps to notify all employees called out on strike to resume services forthwith.

3. The Milwaukee Gas Light Company is a Wisconsin Corporation engaged in the business of furnishing light, heat and gas to the public in Milwaukee County, Wisconsin.

4. The Milwaukee Solvay Coke Company is a Wisconsin Corporation wholly owned by the Milwaukee Gas Light Company; that at all times involved in this proceeding said Coke Company was engaged in the business of manufacturing gas to be supplied to the Milwaukee Gas Light Company for distribution to the public in Milwaukee County, Wisconsin; that said Milwaukee Solvay Coke Company supplied during October, 1949, 55 to 60 per cent of the gas distributed to the public by the Milwaukee Gas Light Company and at other times has supplied from 50 to 80 per cent of the base load of gas distributed by said Milwaukee Gas Light Company.

5. That a strike of the employees of the Milwaukee Gas Light Company which was called by the Negotiating Committee of Local 18 for 6 A. M. October 5, 1949, was continued after service of the order described in Findings 1 and 2; that none of the respondents, United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, [fol. 116] Arthur St. John, Thomas Lansing and Alvin C. Fuhrman, took any steps to notify any of the employees called out on strike to resume service until about 8 o'clock on the morning of October 6, at which time said respondents notified the employees that a settlement of the labor dispute between Local 18 and the Milwaukee Gas Light Company had been reached, that the strike had been won, and that employees should return to work.

6. That after service of the court's order, Local 18 caused the premises of the Milwaukee Solvay Coke Company to be picketed and caused picket signs to be displayed asking employees of the Coke Company to help Local 18 win its strike; that a picket line was maintained by Local 18 from about 3 o'clock in the afternoon of October 5 until about 11 o'clock P. M. on that day, and during the early part of the morning of October 6; that employees of the Coke Company refrained because of said line from performing their duties; and that said company was thereby prevented from manufacturing and supplying to the Milwaukee Gas Light Company all but a very small per cent of the amount of gas normally supplied.

7. That the Milwaukee Gas Light Company was prevented by said strike from distributing gas to the public on October 5 and 6; that it endeavored to maintain a minimum pressure in the distribution system in order to prevent air from getting into the mains and creating a condition likely to result in explosions, but that it was unable to maintain a sufficient pressure to avoid danger; that the company was compelled by the strike to make public re-[fol. 117] quest to consumers to shut off appliances and to turn off gas service at their meters.

8. That the respondents, United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, Arthur St. John, Thomas Lansing and Alvin Fuhrman, and each of them, disobeyed and failed to obey the order of this court entered October 5, 1949 by encouraging a strike of the Milwaukee Gas Light Company, by encouraging picketing of the Milwaukee Solvay Coke Company, and by failing and neglecting to take steps to notify employees of the gas company called out on strike to resume service forthwith.

9. That said acts and conduct were calculated to, and actually did, defeat, impede and prejudice the rights and remedies of the Wisconsin Employment Relations Board, a party in said action, which is charged by statute with the duty to prevent violations of subchapter III of Chapter 111, Wis. Stats.

10. That the evidence does not sufficiently and clearly establish the knowledge of the other respondents above named of the scope and requirement of the court's order issued October 5, 1949.

Conclusions of Law

That United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, Arthur St. John, Thomas Lansing and Alvin C. Fuhrman are, and each of them is, guilty of wilful and contumacious civil contempt.

[fol. 118] That the evidence does not sufficiently and clearly establish wilful and contumacious civil contempt as to the other respondents above named.

Dated ——— —, 1950.

By the Court, ——— ———, Circuit Judge.

IN CIRCUIT COURT OF MILWAUKEE COUNTY

JUDGMENT

The order of this court requiring the United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Alvin C. Fuhrman, Thomas Lansing, Peter Lupo, Charles Nutting, Al Helf, Cy Hackert, Ray Jonas, Charles Bauer, Al Smidoch, Peter Shank, Dan Burns, Joe Seborn, Dan Kebosky, Joe Marquardt, Fred Stockfish, and Chester Walczak to show cause why they and each of them should not be punished as for a civil contempt in failing to obey and disobeying the order of this court issued on the 5th day of October, 1949, coming on to be heard on the 16 and 17 days of January, 1950, before the Circuit Court of Milwaukee County, Branch No. 1, Honorable Otto H. Breidenbach presiding, and the petitioner appearing by Thomas E. Fairchild, Attorney General, and Beatrice Lampert, Assistant Attorney General, and the respondents appearing by Max Raskin and William Quick, and the court having heard the evidence and being fully advised in the premises and having made and filed its findings of fact and conclusions of law pursuant to said decision.

Now, upon motion of Thomas E. Fairchild, Attorney [fol. 119] General, and upon all the records, files and proceedings herein,

1. It Is Adjudged and Decreed that United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, Arthur St. John, Thomas Lansing and Alvin C. Fuhrman are, and each of them is, guilty of civil contempt in having disobeyed and in failing to obey the order made by the court in this action on the fifth day of October, 1949.

2. That as punishment for said contempt the United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, Arthur St. John, Thomas Lansing and Alvin C. Fuhrman, and each of them, shall pay a fine in the sum of Two Hundred and Fifty Dollars (together with the costs and expenses of this proceedings in the amount of $, which costs and expenses shall be hereafter inserted in this judgment by the Clerk upon the filing by the petitioner, Wisconsin Employment Relations Board, of a bill of costs with necessary affidavits and proof of service upon the above named respondents).

3. That as to the respondents, Chester Walczak, Thomas Lansing, Peter Lupo, Charles Nutting, Al Helf, Cy Hackert, Ray Jonas, Charles Bauer, Al Smidoch, Peter Shank, Dan Burns, Joe Seborn, Dan Kabosky, Joe Marquardt, Fred Stockfish, the petition of the Wisconsin Employment Relations Board to punish for civil contempt be and it is hereby dismissed.

Dated ——— —, 1950.

By the Court, —— ——-, Circuit Judge.

[fo.. 120] In Circuit Court of Milwaukee County

Venue Title Order

1 to 12 Proof of Service

Upon reading and filing the complaint of the Wisconsin Employment Relations Board in this action, and upon the sworn testimony of Henry C. Rule, member of such board, and on motion of Thomas E. Fairchild, Attorney General, Stewart G. Honeck, Deputy Attorney General, and Beatrice Lampert, Assistant Attorney General,

It Is Ordered that the defendants and each of them show cause before the Calendar Judge of the Circuit Court of Milwaukee County at the court room of said court in the court house, Milwaukee, Wisconsin, on the 7th day of October, 1949, at 2 P. M. of said day why a temporary injunction should not be granted:

(a) restraining the defendants, Milwaukee Gas Light Company, Glen R. Chamberlain, B. T. Frank and B. J. Imse, and each of them, and their employes, servants and agents, from failing and neglecting to exert every reasonable effort to settle any labor dispute between the Milwaukee Gas Light Company and the representative of its employes and to prevent the collective bargaining process from reaching a state of impasse and stalemate;

(b) restraining the defendants, The United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Chester Walczak and Thomas Lansing, and each of them, and their employees, servants, agents, members and all persons acting in concert

[fol. 121] with them, from calling a strike, going out on strike or causing any work stoppage or slowdown which would cause an interruption of the service of the Milwaukee Gas Light Company or the Milwaukee Solvay Coke Company, and from instigating, inducing, conspiring with or encouraging any strike, slowdown or work stoppage which would cause interruption of such service and from picketing or causing to be picketed the premises of the Milwaukee Solvay Coke Company.

It Is Further Ordered that until the hearing of said order to show cause:

(a) the defendants, Milwaukee Gas Light Company, Glen R. Chamberlain, B. T. Frank, P. J. Imse, and each of them, and their employes, servants and agents, do desist and refrain from failing and neglecting to exert every reasonable effort to settle the labor dispute between said company and the representative of its employes and to prevent the collective bargaining process from reaching a state of impasse and stalemate;

(b) the defendants, The United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Chester Walczak and Thomas Lansing to absolutely desist and refrain from calling a strike, going out on strike, or causing any work stoppage or slowdown which would cause an interruption of the service of the Milwaukee Gas Light Company or the Milwaukee Solvay Coke Company and from instigating, inducing, conspiring with or encouraging any strike, slowdown or work stoppage which would cause interruption of such [fol. 122] service, and from picketing or causing to be picketed the premises of the Milwaukee Solvay Coke Company.

It Is Further Ordered that until the hearing of said order to show cause the defendants, The United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Chester Walczak and Thomas Lansing, take immediate steps to notify all employes called out on strike to resume service forthwith.

By the Court, Otto Breidenbach, Circuit Judge.

IN CIRCUIT COURT OF MILWAUKEE COUNTY

SUMMONS AND COMPLAINT

Now comes the Wisconsin Employment Relations Board, the plaintiff above named, by Thomas E. Fairchild, Attorney General, Stewart G. Honeck, Deputy Attorney General, and Beatrice Lampert, Assistant Attorney General, its attorneys acting at its request, and for a cause of action alleges and shows to the court:

1. That the plaintiff (hereinafter referred to as the board) is and at all times mentioned herein was an administrative body created and existing pursuant to Ch. 111 of the Wisconsin Statutes; and that L. E. Gooding is the chairman and J. E. Fitzgibbon and Henry C. Rule are members of said board.

2. That the defendant, Milwaukee Gas Light Company (hereinafter referred to as the company), is a public utility [fol. 123] corporation organized and existing under the laws of the State of Wisconsin; that it is engaged in the business of furnishing gas for heat, light, cooking and other purposes to the public in Milwaukee County, Wisconsin; and that it is the only source from which such services can be obtained by the public in said county.

3. That the defendants, Glen R. Chamberlain, B. T. Frank, and P. J. Imse are the president, vice president and secretary respectively of the defendant Milwaukee Gas Light Company; that said named defendants are residents of Milwaukee County, Wisconsin, that more specific addresses are unknown to complainant and that they are proper representatives of the company for purposes of bargaining collectively with its employes.

4. That the defendant, United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O. (hereinafter referred to as Local 18), is a voluntary labor organization organized and existing for the purpose of representing, and bargaining collectively on behalf of, certain employes; that said Local 18 is the bargaining representative of the employes who are engaged in the performance of production and maintenance work in the Meter Repair Shop, Service Shop, Third Ward Works, Street Department, West Works and the Meter Reading Departments of the Milwaukee Gas Light Company; and

that all of the employes so represented by Local 18 are engaged in the performance of service essential to the public as set forth in sec. 111.51 of the Wisconsin Statutes.

[fol. 124] 5. That Arthur St. John, Chester Walczak and Thomas Lansing are respectively the president, business agent, and member of the Bargaining Committee of Local 18; and that they represent said Local 18 in collective bargaining between said local and Milwaukee Gas Light Company; that said defendants reside in Milwaukee County, Wisconsin; and that more specific address is unknown to complainant.

6. That a labor dispute exists between the Company and its employes represented by Local 18, with respect to various matters affecting wages, hours and other conditions of employment of employes of the Company.

7. That neither the company nor Local 18, nor any representative thereof, petitioned the board to appoint a conciliator pursuant to sec. 111.54 Stats., until after the board upon its own initiative found it necessary to make such an appointment.

8. Upon information and belief, that at a meeting held in the City of Milwaukee, Milwaukee County, Wisconsin, on the 4th day of October, 1949, Local 18 voted to call a strike of employes of the Milwaukee Gas Light Company; that public announcement of said action was made by the officials of Local 18 including the named defendants, Arthur St. John, Chester Walczak and Thomas Lansing; that said Local 18 has called upon said employes to strike to begin October 5, 1949; that most of the employes of the company have discontinued work pursuant to such call, and all of the productive employes will be called out pursuant to such call by noon of October 5, 1949.

[fol. 125] 9. That said defendants have caused a picket line to be established at the premises of the Milwaukee Solvay Coke Company, a public utility employer located in the City of Milwaukee, Wisconsin, for one sole purpose of inducing and encouraging a strike and work stoppage of such employes; that said employes have been restrained by order of this Court from going out on strike; that maintenance of such picket line by the defendants is calculated and intended to cause a strike and work stoppage contrary to statute and contrary to the order of this Court.

10. That by such actions and other conduct said defendants did, during the months of September and October, 1949, instigate, induce, conspire with and encourage persons employed by the Milwaukee Gas Light Company to engage in a strike and work stoppage.

11. That the defendant, Milwaukee Gas Light Company and its officers above named as defendants, and each of them, have failed and neglected to exert every reasonable effort to settle the labor dispute between said Company and Local 18, and to prevent the collective bargaining process from reaching a state of impasse and stalemate.

12. That the Company is engaged in rendering essential service to the public in the State of Wisconsin and that the uninterrupted service of the employes who are represented by Local 18, and the employes of the Milwaukee Solvay Coke Company, is necessary to a continuance of the performance of such essential service; and that a strike or work stoppage in said companies would cause an interruption of such essential service.

[fol. 126] 13. That the defendants Local 18 and Arthur St. John, Chester Walczak and Thomas Lansing threaten to continue to instigate, induce, conspire with and encourage other persons to engage in a strike which will cause interruption of an essential service, and will continue to do so in violation of sec. 111.62, Wisconsin Statutes, unless restrained by judgment of this Court.

14. That the defendants, Milwaukee Gas Light Company, Glen R. Chamberlain, B. T. Frank, P. J. Imse are taking no action to conform to their obligation to exert every reasonable effort to settle a labor dispute and to prevent the collective bargaining process from reaching a state of impasse and stalemate, and will continue to fail to take such action, in violation of sec. 111.52 of the statutes, unless restrained from such violation by judgment of this Court.

15. That the board has a responsibility under sec. 111.62 of the Wisconsin Statutes for enforcement of compliance with the provisions of secs. 111.52 and 111.62.

16. That the conduct of the defendants, Milwaukee Gas Light Company, Glen R. Chamberlain, B. T. Frank and P. J. Imse in failing and neglecting to exert every reasonable effort to settle the labor dispute with Local 18 and to prevent the collective bargaining process from reaching a state of impasse and stalemate, and the conduct of the de-

fendants, Local 18 and Arthur St. John, Chester Walczak and Thomas Lansing in instigating, inducing, conspiring with and encouraging other persons to go out on strike, will [fol. 127] work irreparable injury to the complainant and to the citizens of the State of Wisconsin; will put the complainant to the necessity of bringing a multiplicity of suits; and that your complainant has no adequate remedy at law for redress against such conduct.

Wherefore complainant demands judgment that the defendants, Milwaukee Gas Light Company, Glen R. Chamberlain, B. T. Frank and P. J. Imse, and each of them, and their employes, servants and agents, be perpetually restrained and enjoined from failing and neglecting to exert every reasonable effort to settle any labor dispute between the Milwaukee Gas Light Company and the representative of its employes and to prevent the collective bargaining process from reaching a state of impasse and stalemate; and that the defendants, Local 18 and Arthur St. John, Chester Walczak and Thomas Lansing, and each of them, and their employes, servants, agents, members and all persons acting in concert with them be perpetually restrained and enjoined from calling a strike, going out on strike, or causing any work stoppage or slowdown which would cause an interruption of the service of the Company or of the Milwaukee Solvay Coke Company, and from instigating, inducing, conspiring with or encouraging any strike, slowdown or work stoppage which would cause interruption of such service; and from picketing or causing to be picketed the premises of the Milwaukee Solvay Coke Company; and for such other relief as may be appropriate in the premises.

[fol. 128] In Circuit Court of Milwaukee County

[Title omitted]

Restraining Order

The order to show cause issued by this court on the 5th day of October, 1949 having come on for hearing at 2 p. m. on the 7th day of October, 1949 and Beatrice Lampert having appeared for the plaintiff and Max Raskin having appeared for the defendants, The United Gas, Coke and

[fol. 129] Chemical Workers of America, District 7, Local Union 18, Affiliated with the C. I. O., Arthur St. John, Chester Walczak and Thomas Lansing and Vernon A. Swanson having appeared for the defendants, Milwaukee Gas Light Company, Glen R. Chamberlain, B. T. Frank and P. J. Imse and it having been stipulated by and between the parties that the temporary restraining order should be continued until the final disposition of the issues upon their merits, Now, Therefore,

It is ordered that until the final judgment in the above entitled matter (a) the defendants, Milwaukee Gas Light Company, Glen R. Chamberlain, B. T. Frank, P. J. Imse, and each of them, and their employes, servants and agents, do desist and refrain from failing and neglecting to exert every reasonable effort to settle the labor dispute between said company and the representative of its employes and to prevent the collective bargaining process from reaching a state of impasse and stalemate; (b) the defendants, The United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Chester Walczak and Thomas Lansing to absolutely desist and refrain from calling a strike, going out on strike or causing any work stoppage or slowdown which would cause an interruption of the service of the Milwaukee Gas Light Company or the Milwaukee Solvay Coke Company and from instigating, inducing, conspiring with or encouraging any strike, slowdown or work stoppage which would cause interruption of such service, and from picketing [fol. 130] or causing to be picketed the premises of the Milwaukee Solvay Coke Company.

It is further ordered that until the hearing of said order to show cause the defendants, The United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Chester Walczak and Thomas Lansing, take immediate steps to notify all employes called out on strike to resume service forthwith.

Dated this — day of October, 1949.

By the Court. —— ——, Circuit Judge.

IN CIRCUIT COURT OF MILWAUKEE COUNTY

ANSWER OF LOCAL 18

Come now the answering defendants, United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, and Arthur St. John and Chester Walmzak, and in answer to plaintiff's complaint allege as follows:

1. Admit the allegations contained in paragraph one.
2. Admit the allegations contained in paragraph two.
3. Admit the allegations contained in paragraph three, upon information and belief.
4. Admit the allegations contained in paragraph four.
5. Admit the allegations contained in paragraph five, except to state that one Thomas Lansing was not served with [fol. 131] any process, summons or complaint or order to show cause, and therefore no appearance is made on his behalf.
6. Admit the allegations contained in paragraph six.
7. Admit the allegations contained in paragraph seven.
8. Admit that on the 4th day of October, 1949, Local 18 voted to call a strike of the employees of the Milwaukee Gas Light Company.
9. Admit that said union established a picket line, in order to make it known to the world that the Milwaukee Gas Light Company had refused to enter into a contract with the said union.
10. These answering defendants admit the allegations contained in paragraph eleven of the complaint.
11. Admit the allegations contained in paragraph twelve.
12. Deny each and every other allegation and matter of fact set forth in the complaint and not specifically admitted.

In further answer to the plaintiff's complaint, those defendants allege as follows:

(a) That there is now pending in the District Court of the United States, Eastern District of Wisconsin, an action seeking to enjoin these proceedings, which was filed on October 3rd, 1949, wherein the plaintiff in the action at bar is the defendant, and the answering defendants at bar are [fol. 132] the plaintiffs, and the Milwaukee Gas Light Company is a defendant, a copy of which complaint is hereto attached and made part of this answer, marked Exhibit "A".

(b) That the defendant, Milwaukee Gas Light Company, hereinafter referred to as the defendant company, is a Wisconsin corporation and is a public utility employer with offices located at 626 East Wisconsin Avenue, Milwaukee, Wisconsin, and is primarily engaged in furnishing the following services: Illuminating and heating gas to the general public in the city and county of Milwaukee, Wisconsin. That it is engaged in commerce and trade affecting commerce, as defined in Sections 2 (6) and 2 (7) of the Labor Management Relations Act of 1947.

(c) The members of the Union, including these answering defendants, have assembled and associated themselves in the said Union for the purpose of collective bargaining and otherwise dealing with the defendant company concerning hours of employment, rates of pay, pensions, working conditions, grievances arising out of employment, and for other mutual aid and protection, and by such means to improve their economic and social conditions as citizens of the United States.

(d) The Labor Management Relations Act of 1947, adopted by the Congress, is a law regulating commerce as set forth in Section 101 and Section 204 of the Act as Amended. That since 1937, to August 1st, 1943, the defendant company recognized the defendant union as the exclusive bargaining representative for all of its employees [fol. 133] performing production and maintenance work, for the purpose of bargaining with respect to rates of pay, hours of employment, and other conditions of employment, and that on August 1st, 1943, the defendant union was duly certified by the National Labor Relations Board, acting under the National Labor Relations Act of 1935, as the exclusive bargaining representative for all of the employees of the defendant company in said unit, for the purpose of bargaining with respect to rates of pay, hours of employment, and other conditions of employment.

(e) That commencing with June, 1937, and annually thereafter including June, 1948, the defendant union and the defendant company entered into collective bargaining agreements for wages, hours of employment, and other working conditions of all of the employees represented by the said Union.

(f) That the most recent of such contracts was entered into between the defendant union and the defendant company on September 24th, 1948, which by its terms remained

in full force and effect until June 1st, 1949, and from year to year thereafter unless terminated by written notice on or before April 1st, of any year; that the defendant union terminated said agreement as of June 1st, 1949, by written notice to the defendant company prior to April 1st, 1949, as required by Section 8 (d) of the Labor Management Relations Act of 1947.

(g) That the Federal Mediation and Conciliation Service, acting under the Notice of Termination of Contract, copy of which was submitted to it, intervened and proceeded to assist in the negotiation of a contract for the year 1949-50.

[fol. 134] (h) That on September 19th, 1949, the defendant union filed a petition with the National Labor Relations Board, charging the defendant company with having violated Section 8 (a) (5) of the Labor Management Relations Act of 1947, in that it was guilty of an unfair labor practice for having failed and refused to bargain collectively with the defendant union, the duly authorized bargaining representative of the majority of the employees in the bargaining unit, and that such petition is now pending before the National Labor Relations Board.

(i) Subsequent to the filing of the aforesaid petition with the National Labor Relations Board, defendant company did enter into collective bargaining with the defendant union covering wages, pensions, hours and other conditions of employment.

(j) That on October 4th, 1949, these answering defendants, because of the failure of the defendant company to compromise upon and agree to wages, pensions and other working conditions, left the employment of the defendant company individually, in concert, and in agreement with others, and commenced to peacefully picket the defendant company premises.

(k) That the Circuit Court of Milwaukee County has no jurisdiction of the subject matter of this suit, in which said restraining order was issued, for the reason that subchapter 3, Chapter 111, of the Wisconsin Statutes of 1947, is in direct conflict with the United States Labor [fol. 135] Management Act of 1947, and the declared public policy of the United States.

(l) That on October 6th, 1949, defendant union and the defendant company agreed upon wages, hours and other conditions of employment, but have not agreed on the exact

terms and conditions of the pension plan for the employees of the defendant company for whom the defendant union is authorized to bargain; that the defendant company threatens to invoke Section 111.55 and other provisions of subchapter 3, Chapter 111, Wisconsin Statutes of 1947, to compel these answering defendants to agree to a pension plan as may be determined by a board of arbitrators provided for in said Statutes.

(m) That subchapter 3 of Chapter 111 of the Wisconsin Statutes of 1947 is in direct conflict with the Labor Management Relations Act of 1947, in that such Wisconsin Act denies these defendants the right to bargain collectively, but compels them to accept a contract drawn by strangers to them, and without their consent or approval.

(n) That the threatened act of the plaintiff herein to compel these answering defendants to accept a contract drawn by strangers to them deprives them of their fundamental constitutional right to make and enter into their own labor agreement covering wages, hours and other conditions of employment.

(o) That under the Labor Management Relations Act of 1947, and under the Constitution of the United States, these [fol. 136] answering defendants, should they fail in negotiating a labor contract with the defendant company, have the right to leave their place of employment, either individually or in concert, but under Section 111.62 it is unlawful for these answering defendants to leave their place of employment, should they fail to reach an agreement with the defendant company, in concert or in agreement with others under penalty of confinement in the common jail.

(p) That a majority in the collective bargaining unit of the employees of the Milwaukee Gas Light Company represented by the defendant Union herein voted by secret ballot to call a strike.

(q) That all picketing and other concomitants of the strike were carried out in a peaceful and orderly manner.

(r) That the strike on October 6th, 1949, was terminated and all employees have since returned to their regular line of duty.

(s) In further answer to plaintiff's complaint, these answering defendants state that the decision to call a strike was reached by the union on Tuesday night, October 4th, 1949, and that the following morning, October 5th, 1949,

various individuals, in a peaceful and proper manner, picketed the premises of the defendant company.

That the complaint to which these answering defendants make answer was served upon said answering defendants at approximately 2:00 o'clock P. M. October 5th, 1949. That immediately thereafter these answering defendants sought the assistance of Frank Zeidler, Mayor of the city of [fol. 137] Milwaukee, to make contact with the defendant company for the purpose of conciliating the differences then existing between the company and the union. That upon information and belief, the Mayor sought to make such contact.

That at about 4:00 o'clock P. M. these answering defendants further sought the assistance of Robert E. Tehan, Judge of the United States District Court, in conciliating the differences then existing between the company and the union, and that thereafter a conference was called between these defendants and others representing the union, and constituting the bargaining committee and the representatives of the company, to meet in the chambers of the United States District Court at 7:00 o'clock P. M.; that at such time, or as soon thereafter as possible, such meeting was held, and continued without interruption of any kind until an agreement was reached between the parties which agreement was executed at approximately 8:45 o'clock A. M. Thursday morning, October 6th, 1949.

Wherefore these answering defendants demand the plaintiff's complaint and all proceedings thereon be dismissed.

Max Raskin, Attorney for Answering Defendants.

[fol. 138] EXHIBIT "A" TO ANSWER

U. S. DISTRICT COURT

Amended Complaint

Civil Action No. 4844

For their amended complaint, plaintiffs allege that:

1. This is a suit of a Civil nature seeking an injunction and a declaratory judgment, and arises under the Constitution of and the laws of the United States.

2. The jurisdiction of the court is based upon:

(a) The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3000.00) pursuant to Section 1331 of Title 28 of the U. S. C. A.

(b) The suit arises under the United States laws regulating commerce, pursuant to Section 24 (f) (8), Title 28, U. S. C.

(c) Plaintiffs seek to redress the deprivation under color of a state law their right, privilege and immunity secured by the Constitution of the United States and an act of Congress, providing for equal rights of citizens or of all persons within the jurisdiction of the United States, pursuant to Section 1343 of Title 28 of the United States Code.

3. The plaintiff, Local 18, United Gas, Coke and Chemical Workers of America, affiliated with the Congress of Industrial Organization, and hereinafter referred to as the [fol. 139] Union, is an unincorporated association of employees employed in the production, maintenance, operation, construction and meter reading, of approximately seven hundred seventy (770) in number, all of whom are employed with the defendant, Milwaukee Gas Light Company, and that the office of the said Union is in the city of Milwaukee, Milwaukee County, Wisconsin; that it is a labor organization as defined in Section 2 (5) of the Labor Management Relations Act of 1947.

4. The plaintiff, Chester Walczak, is a citizen of the United States and a resident of the city and county of Milwaukee, Wisconsin, residing at 3350 North Richards Street, and is the International Representative of said Union.

5. The plaintiff, Arthur St. John, is a citizen of the United States, and a resident of Waukesha County, Wisconsin, residing at Route 12, Box 529, and is the President of the said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Five Hundred Dollars ($3500.00).

6. The plaintiff, Al Fuhrman, is a citizen of the United States, and a resident of Milwaukee County, Wisconsin, residing at 6308 Beloit Road, West Allis 14, and is the Vice president of the said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Three Hundred Dollars ($3300.00).

[fol. 140] 7. The plaintiff, Emil Heimsch, is a citizen of the United States, and a resident of Milwaukee, Wisconsin, residing at 1054 North 46th Street, and is the Chairman of the Bargaining Committee of the Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Seven Hundred Dollars ($3700.00).

8. The plaintiff, Thomas Lansing, is a citizen of the United States, and a resident of Milwaukee, Wisconsin, residing at 2779 South Superior Street, and is a member of the Bargaining Committee of said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Five Hundred Dollars (-3500.00).

9. The plaintiff, John F. Sheehan, is a citizen of the United States, and is a resident of Miiwaukee, Wisconsin, residing at 2518 South 11th Street, Milwaukee, and is a member of the Bargaining Committee of said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Two Hundred Dollars ($3200.00).

10. That the plaintiff, E. F. Regner, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, residing at 2371 South 79th Street, West Allis 14, and is a member of the Bargaining Committee of said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Three Hundred Dollars ($3300.00).

[fol. 141] 11. The plaintiff, Edward P. Regan, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, residing at 2933 North Cramer Street, and is a member of the Bargaining Committee of said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand One Hundred Dollars ($3100.00).

12. The plaintiff, La Moine S. Cardinal, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, residing at 1435 West Kilbourn Avenue, and is a member of the Bargaining Committee of said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Thirty-two Hundred Dollars ($3200.00).

13. The plaintiff, Gordon Donnelly, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin,

residing at 2134A North 2nd Street, and is the recording secretary of said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand One Hundred Dollars ($3100.00).

14. The defendant, L. E. Gooding, is a Commissioner of the Wisconsin Employment Relations Board, and duly appointed and qualified to act as such Commissioner, and is a citizen of the United States, and a resident of the city of Fond du Lac, Winnebago County, Wisconsin. The defendant, J. E. Fitzgibbon, is a Commissioner of the Wisconsin Employment Relations Board, and duly appointed and qualified to act as such Commissioner, and is a citizen of the [fol. 142] United States, and a resident of the city of Milwaukee, Milwaukee County, Wisconsin. The defendant, Henry C. Rule, is a Commissioner of the Wisconsin Employment Relations Board, and duly appointed and qualified to act as such Commissioner, and is a citizen of the United States, and a resident of the city of Eau Claire, Eau Claire County, Wisconsin. That all of said defendants constitute the Wisconsin Employment Relations Board, which has offices at 110 East Wisconsin Avenue, Milwaukee, Wisconsin. That said Wisconsin Employment Relations Board is established pursuant to and under the Statutes of the State of Wisconsin, Section 111.03 Wis. Stats. of 1947, and is composed of the aforesaid Commissioners; that said Board has for its duty the enforcement and compliance with Subchapter 3 of Chapter 111 of the Laws of the State of Wisconsin titled "Public Utilities" as set forth in Sections 111.50 through 111.64 Wisconsin Statutes of 1947.

15. The defendant, Thomas E. Fairchild, is the duly elected, qualified and acting Attorney General of the State of Wisconsin, and as such is charged with the enforcement of the laws of the State of Wisconsin; is a citizen of the United States and is a resident of the city of Madison, Dane County, Wisconsin.

16. That the defendant, Milwaukee Gas Light Company, hereinafter referred to as the defendant company, is a Wisconsin corporation and is a public utility employer with offices located at 606 East Wisconsin Avenue, Milwaukee, Wisconsin, and is primarily engaged in furnishing the following services: Illuminating and heating gas [fol. 143] to the general public in the city and county of Milwaukee, Wisconsin. That it is engaged in commerce

and trade effecting commerce, as defined in Sections 2 (6) and 2 (7) of the Labor Management Relations Act of 1947.

17. The plaintiffs bring this action on behalf of themselves and all others similarly situated, that is to say, the members of the Union who are also employees of the defendant company, and are authorized so to do.

18. That the annual earnings of all of such members of the Union as employees of the defendant company is approximately Two Million Three Hundred Ten Thousand Dollars ($2,310,000.00).

19. The members of the Union, including the plaintiffs, have assembled and associated themselves in the said Union for the purpose of collective bargaining and otherwise dealing with the defendant company concerning hours of employment, rates of pay, pensions, working conditions, grievances arising out of employment, and for other mutual aid and protection, and by such means to improve their economic and social conditions as citizens of the United States.

20. The Labor Management Relations Act of 1947, adopted by the Congress, is a law regulating commerce as set forth in Section 101 and Section 204 of the Act as Amended. That since 1937, to August 1st, 1943, the defendant company recognized the plaintiff Union as the exclusive bargaining representative for all of its employees performing production and maintenance work, for the purpose of [fol. 144] bargaining with respect to rates of pay, hours of employment, and other conditions of employment, and that on August 1st, 1943, the plaintiff union was duly certified by the National Labor Relations Board, acting under the National Labor Relations Act of 1935, as the exclusive bargaining representative for all of the employees of the defendant company in said unit, for the purpose of bargaining with respect to rates of pay, hours of employment, and other conditions of employment.

21. That commencing with June, 1937, and annually thereafter including June, 1948, the plaintiff union and the defendant company entered into collective bargaining agreements for wages, hours of employment, and other working conditions of all of the employees represented by the said Union.

22. That the most recent of such contracts was entered into between the plaintiff union and the defendant company on September 24th, 1948, which by its terms remained in

full force and effect until June 1st, 1949, and from year to year thereafter unless terminated by written notice on or before April 1st, of any year; that the plaintiff union terminated said agreement as of June 1st, 1949, by written notice to the defendant company prior to April 1st, 1949, as required by Section 8 (d) of the Labor Management Relations Act of 1947.

23. That the Federal Mediation and Conciliation Service, acting under the Notice of Termination of Contract, copy of which was submitted to it, intervened and proceeded to assist in the negotiation of a contract for the year 1949-50. [fol. 145] 24. That the probable earnings of all of such employees represented by the plaintiff union for a contemplated contract for the year 1949-50 is Two Million Three Hundred Ten Thousand Dollars ($2,310,000.00).

25. That on September 19th, 1949, the plaintiff union filed a petition with the National Labor Relations Board, charging the defendant company with having violated Section 8 (a) (5) of the Labor Management Relations Act of 1947, in that it was guilty of an unfair labor practice for having failed and refused to bargain collectively with the plaintiff union, the duly authorized bargaining representative of the majority of the employees in the bargaining unit, and that such petition is now pending before the National Labor Relations Board.

26. Subsequent to the filing of the aforesaid petition with the National Labor Relations Board, defendant company did enter into collective bargaining with the plaintiff union covering wages, pensions, hours and other conditions of employment.

27. That on October 4th, 1949, the plaintiffs, because of the failure of the defendant company to compromise upon and agree to wages, pensions and other working conditions, left the employment of the defendant company individually, in concert, and in agreement with others, and commenced to peacefully picket the company premises.

28. That the defendant, Wisconsin Employment Relations Board, acting under the purported authority of Sec- [fol. 146] tion 111.63 Wisconsin Statutes 1947, secured an injunction from the Circuit Court of Milwaukee County, restraining the plaintiffs from leaving their place of employment in concert or in agreement with others, and from picketing or otherwise violating the provisions of subchapter 3, Chapter 111 of the Wisconsin Statutes of 1947.

That the Circuit Court of Milwaukee County had no jurisdiction of the subject matter of this suit, in which said restraining order was issued, for the reason that subchapter 3, Chapter 111, of the Wisconsin Statutes of 1947, is in direct conflict with the United States Labor Management Act of 1947, and the declared public policy of the United States.

29. The defendant Attorney General, together with the defendant Wisconsin Employment Relations Board, has since caused the issuance of process to punish the plaintiffs and other employees of the defendant company for whom this action is brought, for allegedly violating the injunction of the Circuit Court and subchapter 3, Chapter 111 of the Wisconsin Statutes of 1947; that unless the relief prayed for herein is granted by this court the plaintiffs and others for whom they are authorized to act will be subjected to fines or imprisonment, or both.

30. The defendant Attorney General of the State of Wisconsin, acting through the District Attorney of Milwaukee County, unless the relief prayed for herein is granted by this court, threatens to invoke the criminal penalties prescribed by the said Section 111.62 of subchapter 3, Chapter 111 of the Wisconsin Statutes of 1947, against the plaintiffs [fol. 147] and others for whom said plaintiffs are authorized to act, and that said threatened action by the defendant Attorney General is unlawful for the reason that such action is repugnant to the Constitution and laws of the United States.

31. That on October 6th, 1949, plaintiff union and the defendant company agreed upon wages, hours and other conditions of employment, but have not agreed on the exact terms and conditions of the pension plan for the employees of the defendant company for whom the plaintiff union is authorized to bargain; that the defendant company threatens to invoke Section 111.55 and other provisions of subchapter 3, Chapter 111 Wisconsin Statutes of 1947, to compel the plaintiffs to agree to a pension plan as may be determined by a board of arbitrators provided for in said Statutes.

32. That the defendants, L. E. Gooding, J. E. Fitzgibbons and Henry C. Rule, as the Wisconsin Employment Relations Board, and the defendant Thomas E. Fairchild as the Attorney General, threaten to compel the plaintiffs to submit the unresolved issue of pensions involved in the negotia-

tions, to arbitration, and to accept and abide by the result of such arbitration under penalty of confinement in the common jail.

33. That on the 28th day of September, 1949, the defendant company filed with the Wisconsin Employment Relations Board a petition, a copy of which is herewith attached and marked Exhibit "A" and made part of this amended complaint.

34. That on October 3rd, 1949, the defendant, Wisconsin Employment Relations Board, issued an order, a copy of [fol. 148] which is attached hereto and marked Exhibit "B", directing the plaintiffs to choose arbitrators as provided in subchapter 3, Chapter 111 of Wisconsin Statutes of 1947, and that such order issued under the purported authority of the Wisconsin Statutes has not been revoked, and remains as threatened by the Wisconsin Employment Relations Board, binding upon the plaintiffs.

35. That the order and threatened action of both the defendant Wisconsin Employment Relations Board and the Attorney General are all in conflict with the United States Labor Management Relations Act of 1947, and is repugnant to the Constitution of the United States.

36. That the Wisconsin Employment Relations Board and the defendant company claim to act under authority of subchapter 3 of Chapter 111 of the Laws of the State of Wisconsin, 1947, the material parts of which are as follows:

> "111.55. Conciliator unable to effect settlement; appointment of arbitrators. If the conciliator so named is unable to effect a settlement of such dispute within a 15-day period after his appointment, he shall report such fact to the board; and the board, if it believes that a continuation of the dispute will cause or is likely to cause the interruption of an essential service, shall submit to the parties the names of either 3 or 5 persons from the panel provided for in section 111.53. Each party shall alternately strike one name from such list of persons. The person or persons lift on the list shall be appointed by the board as the arbitrator (or arbitrators) to hear and determine such dispute."
>
> [fol. 149] "111.56. Status quo to be maintained. During the pendency of proceedings under this subchaptgr existing wages, hours, and conditions of employment

shall not be changed by actions by either party without the consent of the other."

"111.62. Strikes, work stoppages, slowdowns, lockouts, unlawful; penalty. It shall be unlawful for any group of employes of a public utility employer acting in concert to call a strike or to go out on strike, or to cause any work stoppage or slowdown which would cause an interruption of an essential service; it also shall be unlawful for any public utility employer to lock out his employes when such action would cause an interruption of essential service; and it shall be unlawful for any person or persons to insfigate, to induce, to conspire with, or to encourage any other person or persons to engage in any strike or lockout or slowdown or work stoppage which would cause an interruption of an essential service. Any violation of this section by any member of a group of employes acting in concert or by any employer or by any officer of an employer acting for such employer, or by any other individual, shall constitute a misdemeanor."

"111.63. Enforcement. The board shall have the responsibility for enforcement of compliance with the provisions of this subchapter and to that end may file an action in the circuit court of the county in which any such violation occurs to restrain and enjoin such violation and to compel the performance of the duties imposed by this subchapter. In any such action the provisions of sections 103.51 to 103.63 shall not apply."

37. That the aforesaid provisions of the laws of the State of Wisconsin are in direct conflict with the Labor Management Relations Act of 1947, in that such Wisconsin Acts [fol. 150] deny plaintiffs the right to bargain collectively, but compel them to accept a contract drawn by strangers to them, and without their consent or approval.

38. That the threatened act of the defendants to compel the plaintiffs to accept a contract drawn by strangers to them deprives them of their fundamental constitutional right to make and enter into their own labor agreement covering wages, hours and other conditions of employment.

39. That under the Labor Management Relations Act of 1947, and under the Constitution of the United States, the plaintiffs, should they fail in negotiating a labor contract

with the defendant company, have the right to leave their place of employment, either individually or in concert, but under Section 111.62 it is unlawful for the plaintiffs to leave their place of employment, should they fail to reach an agreement with the defendant company, in concert or in agreement with others under penalty of confinement in the common jail.

40. That it is therefore essential in the judgment of the plaintiffs that they exercise their rights as citizens, including the right to enter into a collective bargaining agreement without restraint, coercion or compulsion on the part of the defendants, and including the right of free speech and assembly and petition, and the right to leave their place of employment individually, in concert, or in agreement with others, should they fail to enter into a collective bargaining agreement with the defendant company.

[fol. 151] 41. That the plaintiffs seek to enjoin and perpetually restrain the defendants:

(a) from interfering with the plaintiffs' right, privilege and immunity secured to them by the Constitution of the United States and the Labor Management Relations Act of 1947; from entering into a contract or agreement with the defendant company on the issue of pensions, or any other negotiable issue voluntarily, and in the absence of that, from leaving their place of employment individually, in concert or in agreement with others;

(b) from taking any steps, issue any process in the Circuit Court of Milwaukee County which seeks to impose a penalty by way of a fine or imprisonment or both, upon the plaintiffs or others similarly situated, for allegedly violating the restraining order of the Circuit Court of Milwaukee County issued on October 5th, 1949;

(c) from taking any steps, signing any complaint, issuing any warrant, or threatening to do any such acts, which have for their purpose the arrest or punishment of the plaintiffs by fine or imprisonment, or to otherwise enforce the penalties of subchapter 3, Chapter 111 of the Wisconsin Statutes of 1947.

42. For all of the aforesaid reasons there is a real and justiciable case and an actual controversy between these plaintiffs and the defendants; the defendant Wisconsin Employment Relations Board and its Commissioners, and the

defendant Attorney General, in threatening to enforce an unconstitutional and void statute, are acting outside their [fol. 152] authority as officers of the State of Wisconsin; plaintiffs have no adequate or timely remedy at law and they will suffer irreparable injury, and that unless the relief herein prayed for is granted they will be in jeopardy and will be forced to defend many criminal prosecutions and other proceedings in court, and will be forced to expend large sums of money in defending such suits, and the hazards of fines and imprisonments upon the plaintiffs and other similarly situated; that plaintiffs are and will thereby be deprived of their rights under the constitution and the laws of the United States, to enjoy the rights of free citizens of the United States.

43. This suit for a declaratory judgment and injunction offers plaintiffs the only remedy to secure an adjudication of the validity of subchapter 3, Chapter 111 of Wisconsin Statutes of 1947 in time to exercise their rights as citizens of the United States.

44. That the threatened acts of the defendants, and the laws under which they seek to impose such acts, unlawfully restrict and abridge the civil rights of the plaintiffs by denying them the freedom of speech and the right of peaceful assembly and petition; unlawfully limits their freedom to join in a labor organization, and to make effective use of any joint action on their part, and thereby deprives them of their liberty and their property without due process of law; unlawfully prevents them from entering into contracts of employment by their own act and thereby prohibits them from the right of contract; unlawfully and arbitrarily dis- [fol. 153] criminates against the plaintiffs by reason that they are employes of a public utility and prohibits them from using their joint efforts in arriving at a voluntary labor contract covering their wages, hours, and other conditions of employment, and thereby deprives them of the equal protection of the law as citizens of the United States, and that such classification is arbitrary, grossly discriminatory, invidious, and is repugnant to the Constitution of the United States; unlawfully invades the rights and liberties of the plaintiffs by seeking to compel them to remain at their place of employment, and that such acts are in violation and repugnant to the laws and Constitution of the United States.

Wherefore plaintiffs pray that:

(a) The defendants be directed full, true and perfect answer to make to this complaint.

(b) A three judge court be convened pursuant to the provisions of Title 18, U. S. Code, Section 380.

(c) The defendants, and each of them, be restrained and enjoined from taking any action or proceeding, make any threat to take any action or proceeding, to compel the plaintiffs to submit to arbitration, or to enter into a labor contract on any negotiable issue, against their will and judgment, or petition any court of record or file any complaint seeking to compel the plaintiffs to submit to arbitration; or take any steps or file any complaint, or pursue any proceeding which would seek to punish the plaintiffs for allegedly violating any court order issued under the purported au- [fol. 154] thority of subchapter 3, Chapter 111 of Wisconsin Statutes, 1947; or to take any steps, file any complaint, issue any warrant or other process, or threaten to do so, seeking to arrest or otherwise punish by fine or imprisonment, the plaintiffs or others for whom they are authorized to act, for allegedly violating any of the provisions of subchapter 3, Chapter 111 Wisconsin Statutes of 1947.

(d) That the court issue a permanent injunction enjoining and restraining the defendants and their agents from taking steps to enforce the penalties of subchapter 3, Chapter 1111 of Wisconsin Statutes of 1937, or other provisions thereof, which interfere with the rights of the plaintiffs as citizens of the United States, and which are in conflict with the laws of the United States and the Constitution of he United States.

(e) This court issue a judgment declaring that the provisions of subchapter 3, Chapter 111 of the Wisconsin Statutes of 1947, insofar as they may be applied to penalize these plaintiffs and others for whom they are authorized to act, to compel them to submit to arbitration on any negotiable issue or which has for its purpose the punishment of the plaintiffs for having left their place of employment in concert or in agreement with others, or for having picketed the defendant company's premises, are void, illegal, unenforceable and repugnant to the United States Labor Management Relations Act of 1947, and to the Constitution of the United States.

[fol. 155] (f) The plaintiffs have such other and further relief as to the court may seem just and equitable.

Max Raskin, Attorney for Plaintiffs. Suite 1801 Wisconsin Tower, 606 W. Wisconsin Avenue, Milwaukee, Wisconsin.

EXHIBIT "A" TO EXHIBIT "A"

Before the Wisconsin Employment Relations Board

In the Matter of the PETITION OF MILWAUKEE GAS LIGHT COMPANY for Appointment of a Conciliator Pursuant to Section 111.54 of the Wisconsin Statutes for 1947

The petition of Milwaukee Gas Light Company represents and shows as follows:

1. The petitioner, Milwaukee Gas Light Company, is a Wisconsin corporation and is a public utility employer within the meaning of subchapter III of Chapter 111 of the Wisconsin Statutes of 1947; and its principal office is located at 606 East Wisconsin Avenue, Milwaukee 2, Wisconsin.

2. The petitioner is primarily engaged in furnishing essential service within the meaning of Section 111.51 of the Wisconsin Statutes for 1947, to-wit, illuminating and heating [fol. 156] gas to the general public in the City and County of Milwaukee, Wisconsin.

3. Petitioner employs a total of approximately One Thousand Three Hundred Ten (1,310) employees. Approximately Seven Hundred Seventy (770) employees of the petitioner, engaged in production, maintenance, operation, construction and meter reading, constitute a separate collective bargaining unit, and are represented for collective bargaining purposes by a labor organization, to-wit, Local 18, United Gas, Coke and Chemical Workers of America (CIO), hereinafter referred to as the "Union".

4. Petitioner and said union executed a Labor Agreement of September 24, 1948, which by its terms remained in full force and effect until June 1, 1949, and from year to year thereafter unless terminated by written notice on or before April first of any year; and the Union terminated said agreement as of June 1, 1949, by written notice to the Company prior to April 1, 1949.

5. Petitioner has attempted in good faith to negotiate the terms of a labor agreement with the Union but has not been able to reach an agreement with the Union, although John E. Roe, Madison, Wisconsin, was appointed as Conciliator by order of the Wisconsin Employment Relations Board, dated September 14, 1949, and participated in several meetings between petitioner and the Union; and petitioner believes said collective bargaining negotiations have reached an impasse and stalemate and that said parties will be unable to effect settlement of said dispute without the interven-
[fol. 157] tion, aid and assistance of the conciliation and/or arbitration processes and procedures provided for in Sections 111.50 through 111.65 of the Wisconsin Statutes for 1947.

6. Petitioner is informed and believes that said dispute if not settled will cause or is likely to cause an interruption of said essential service, to-wit, the furnishing of illuminating and heating gas to residents of the City and County of Milwaukee, Wisconsin.

Wherefore, your petitioner requests that pursuant to Section 111.54 of the Wisconsin Statutes for 1947, the Wisconsin Employment Relations Board reappoint said John E. Roe, or appoint such other person as it may select, as conciliator to meet with said parties for the purposes set forth in Sections 111.54 and 111.55 of the Wisconsin Statutes for 1947.

Dated at Milwaukee, Wisconsin, this 28th day of September, 1949.

Milwaukee Gas Light Company, by Glenn R. Chamberlain, President.

STATE OF WISCONSIN,
Milwaukee County, ss.

Glenn R. Chamberlain, being first duly sworn, on oath deposes and says that he is President of petitioner and makes this verification for and in its behalf by its authority; the foregoing petition is true to his own knowledge except
[fol. 158] as to those matters therein stated on information and belief and as to those matters he believes it to be true; that the reason this petition is not made by plaintiff is that said plaintiff is a corporation; that he is such officer as aforesaid and the sources of his knowledge and the grounds

of his belief are his connections with the affairs of said Company as such officer and the records and papers of said petitioner in his possession.

Glen R. Chamberlain.

Subscribed and sworn to before me this 28th day of September, 1949. Roy M. Sheehy, Notary Public, Milwaukee County, Wisconsin. My Commission expires July 23, 1952. (Notarial Seal.)

STATE OF WISCONSIN

[fol. 159] EXHIBIT "B" TO EXHIBIT "A"

Before the Wisconsin Employment Relations Board

In the Matter of the Dispute Between the MILWAUKEE GAS LIGHT COMPANY AND UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, LOCAL NO. 18, Affiliated with the Congress of Industrial Organizations.

ORDER APPOINTING ARBITRATORS

The Wisconsin Employment Relations Board having heretofore and on the 14th day of September, 1949, upon its own motion appointed John E. Roe of Madison, Wisconsin, as conciliator pursuant to Section 111.54 of the Wisconsin Statutes for the purpose of attempting to settle a dispute existing between the employes of the Milwaukee Gas Light Company represented by the United Gas, Coke and Chemical Workers of America, Local No. 18, affiliated with the Congress of Industrial Organizations, and that the Company and the said John E. Roe having on the 3rd day of October, 1949, reported to the Board that the dis-
[fol. 160] pute between the parties continues to exist, and from such report it appearing that a continuation of the dispute will cause or is likely to cause the interruption of the essential service:

Now, therefore, it is

ORDERED

That pursuant to Section 111.55 of the Wisconsin Statutes the following named persons, all of whom have qualified as arbitrators under the provisions of Section 111.53 of

the Wisconsin Statutes, be submitted to the parties as the persons from which the board of arbitration to determine such dispute shall be elected, to-wit: Nathan P. Feinsinger, Madison, Wisconsin; Herman Runge, Sheboygan, Wisconsin; Carl J. Ludwig, Milwaukee, Wisconsin; Milton LePour, Racine, Wisconsin; and Carl Rix, Milwaukee, Wisconsin.

It is Further Ordered that the representatives of the Milwaukee Gas Light Company and the United Gas, Coke and Chemical Workers of America, Local No. 18, affiliated with the Congress of Industrial Organizations, meet at the Court House in the City of Milwaukee, County of Milwaukee, Wisconsin, on Friday, October 7, 1949, at 10:00 o'clock in the forenoon, at which time each party may strike the name of one person from the list of names above submitted. The remaining three persons will be designated by the Board as the Board of Arbitration to which will be sub-
[fol. 161] mitted the issues in dispute between the parties.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of October, 1949.

Wisconsin Employment Relations Board, by (S.) L. E. Gooding, Chairman; J. E. Fitzgibbon, Commissioner; Henry C. Rule, Commissioner.

In Circuit Court of Milwaukee County

Answer of Milwaukee Gas Company

The defendants, Milwaukee Gas Light Company, Glenn R. Chamberlain, B. T. Franck and P. J. Imse, by Miller, Mack & Fairchild, their attorneys, for answer to the complaint herein:

1. Admit the allegations contained in paragraph 1 of said complaint.

2. Admit the allegations contained in paragraph 2 of said complaint, except that they allege that there is a small and inconsiderable section of Milwaukee County lying outside the limits of the City of Milwaukee in which similar services are rendered by another utility.

3. Admit the allegations contained and set forth in paragraph 3 of said complaint.

[fol. 162] 4. Admit the allegations contained and set forth in paragraph 4 of said complaint.

5. Admit the allegations contained and set forth in paragraph 5 of said complaint.

6. Admit that on October 5, 1949, a labor dispute did exist between the Milwaukee Gas Light Company and its employes represented by Local 18 mentioned in said complaint. Allege that on October 5, 1949, at about 7:00 o'clock in the forenoon, a strike was called and put into effect by said Local and the members thereof; that a settlement was reached as a result of which said strike was terminated during the morning of October 6, 1949, and that said employes returned to work during said day; that certain aspects of the issue involving pensions in said dispute have been reserved for further negotiation; and that no impasse or stalemate has been reached in respect thereto.

7. Admit the allegations contained and set forth in paragraph 7 of said complaint.

8. Admit the allegations contained and set forth in paragraph 8 of said complaint, except as qualified by the allegations contained and set forth in paragraph 6 of this answer.

9. Deny that these answering defendants caused any picket line to be established or had anything to do with the maintenance of the picket line referred to in said paragraph.

10. Deny that these answering defendants at any time instigated, induced, conspired with or encouraged any persons employed by the defendant Milwaukee Gas Light Company [fol. 163] to engage in a strike or work stoppage.

11. Deny each of the allegations contained and set forth in paragraph 11 of said complaint, and allege with respect thereto that defendants exerted every reasonable effort to settle said labor dispute between Milwaukee Gas Light Company and said Union and to prevent the collective bargaining process from reaching a state of impasse and stalemate.

12. Admit the allegations contained and set forth in paragraph 12 of said complaint.

13. Make no answer to the allegations contained and set forth in paragraph 13 of said complaint.

14. Deny the allegations contained and set forth in paragraph 14 of said complaint.

15. Admit the allegations contained and set forth in paragraph 15 of said complaint.

16. Deny that these answering defendants, or any of them, failed or neglected to exert efforts to settle the labor dispute with said Local 18, or failed or neglected to prevent the collective bargaining process from reaching a state of impasse and stalemate; and allege that, in so far as there was a failure to settle said dispute, and, in so far as there was for a time an impasse and stalemate, the same were due to said Local and said defendants St. John, Walczak and Lansing.

[fol. 164] Wherefore, these defendants pray judgment dismissing said complaint as to them.

Miller, Mack & Fairchild, Attorneys for Defendants.
Milwaukee Gas Light Company, Glenn R. Chamberlain, B. T. Franck and P. J. Imse.

IN CIRCUIT COURT OF MILWAUKEE COUNTY

ORDER TO SHOW CAUSE—October 10, 1949

Proof of Service 67 to 85.

On reading and filing the petition of the Wisconsin Employment Relations Board and upon the order filed herein on the 5th day of October, 1949.

It Is Ordered that The United Gas, Coke and Chemical Workers of America, District No. 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Chester Walczak, [fol. 165] Thomas Lansing, Peter Lupo, Charles Nutting, Al Helf, Cy Hackert, Ray Jonas, Charles Bauer, Al Smidoch, Peter Shank, Dan Burns, Al Fuhrman, Joe Seborn, Dan Kabosky, Joe Marquardt, Fred Stockfish and each of them appear before the above named court in the Court House at the City of Milwaukee, Wisconsin, on the 24th day of October, 1949, at the hour of 10 o'clock in the forenoon of said day or as soon thereafter as counsel may be heard and show or cause to the calendar assignment judge of the Circuit Court, if any there be, why they should not be punished as and for a civil contempt in failing to obey and in disobeying the order of this court issued on the 5th day of October, 1949, as described in the petition of the Wisconsin Employment Relations Board herein, and why this court should not grant the relief prayed for in said petition.

It Is Further Ordered that this order and a copy of the petition of the Wisconsin Employment Relations Board be served upon The United Gas, Coke and Chemical Workers of America, District No. 7, Local Union 18 and upon the officers and members named in the preceding paragraph, at least seven days before the time herein fixed for said hearing.

Dated at Milwaukee, Wisconsin, this 10th day of October, 1949.

By the Court, (S.) Otto H. Breidenbach, Circuit Judge.

[fol. 166] In Circuit Court of Milwaukee County

[Title omitted]

Petition for Order to Show Cause

The petition of the Wisconsin Employment Relations Board, the plaintiff in the above entitled action, by Thomas E. Fairchild, Attorney General, Stewart G. Honeck, Deputy Attorney General, and Beatrice Lampert, Assistant Attorney General, respectfully reports and shows:

[fol. 167] 1. That on the 5th day of October, 1949 order was entered in the above entitled action by the Circuit Court of Milwaukee County, Honorable Otto H. Breidenbach, Circuit Judge, Branch No. 1, presiding, requiring The United Gas, Coke and Chemical Workers of America, District No. 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Chester Walczak and Thomas Lansing:

(a) To desist and refrain from calling a strike or causing any work stoppage or slowdown which would cause interruption of the service of the Milwaukee Gas Light Company or the Milwaukee Solvay Coke Company and from *instigating, inducing, conspiring with or encouraging any strike*, slowdown or work stoppage which would cause interruption of such service, and from picketing or causing to be picketed the premises of the Milwaukee Solvay Coke Company.

(b) To take immediate steps to notify all employees called out on strike to resume service forthwith.

2. That true and correct copies of said order were duly and presently served upon all of the defendants above

named on the 5th day of October, 1949, as more fully appears by the proof of service on file in the above entitled action; that at or about one o'clock in the afternoon of said day said order was duly served upon and read to the members of the defendant, The United Gas, Coke and Chemical Workers of America, District No. 7, Local Union 18 in meeting assembled in the City of Milwaukee; and that at or about 3 o'clock in the afternoon of said day the order was duly served upon and read to members of said Local Union [fol. 168] 18 assembled in a picket line at the premises of the Milwaukee Solvay Coke Company, Milwaukee.

3. That Arthur St. John, Chester Walczak and Thomas Lansing are officers, and the following named persons are members, of the defendant, The United Gas, Coke and Chemical Workers of America, District No. 7, Local Union 18, affiliated with the C. I. O.: Peter Lupo, Charles Nutting, Al Helf, Cy Hackert, Ray Jonas, Charles Bauer, Al Smidoch, Peter Shank, Dan Burns, Al Fuhrman, Joe Seborn, Dan Kabosky, Joe Marquardt, Fred Stockfish.

4. On information and belief, that the defendant, The United Gas, Coke and Chemical Workers of America, District No. 7, Local Union 18, and the officers and members thereof named in the preceding paragraph have each of them wholly failed and neglected to conform to the provisions of the order described in paragraph 1 hereof; that they and each of them have failed, refused and neglected to cease and desist from the activities and conduct described in subparagraph (a) of paragraph 1 hereof; and that they and each of them have wholly failed and neglected to take steps to notify employees called out on strike to resume service forthwith as provided in subparagraph (b) of paragraph 1 hereof; that, on the contrary, on the 5th and 6th days of October, 1949, after the service of the order described in paragraph 1 hereof, they and each of them have instigated, induced, conspired with and encouraged a strike, slowdown and work stoppage to cause interruption of the [fol. 169] service of the Milwaukee Gas Light Company and the Milwaukee Solvay Coke Company and have picketed and caused to be picketed the premises of the Milwaukee Solvay Coke Company, in the City of Milwaukee, Milwaukee County, Wisconsin.

5. That the acts and omissions of The United Gas, Coke and Chemical Workers of America, District No. 7, Local Union 18, affiliated with the C. I. O. and of the officers and

members named in paragraph 2 hereof, and of each of them, were calculated to, and do, in fact, defeat and impair the rights of the plaintiff herein; that said plaintiff is charged by the law of the State of Wisconsin with the duty of preventing such acts and omissions in the interest of the public.

6. That no previous application has been made for the punishment of the said defendant, The United Gas, Coke and Chemical Workers of America, District No. 7, Local Union 18, and the officers and members thereof named in paragraph 3, or any of them.

Wherefore your plaintiff prays that an order to show cause may be issued out of this court directed to the defendant, The United Gas, Coke and Chemical Workers of America, District No. 7, Local Union 18 and to the officers and members thereof named in paragraph 3 hereof, and to each of them, requiring them and each of them to appear at a time and place to be fixed by this court and then and there to show cause to this court why they and each of them should not be punished for said civil contempt and why your plaintiff herein should not recover its costs and expenses and why [fol. 170] the court should not make such other orders and give such other relief as may be just and proper in the premises.

IN CIRCUIT COURT OF MILWAUKEE COUNTY

DEFENDANTS

Proposed Findings of Fact and Conclusions of Law

The order of this court, requiring the United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Thomas Lansing, Alvin Fuhrman, Peter Lupo, Charles Nutting, Al Helf, Cy Hackert, Ray Jonas, Charles Bauer, Al Snidoch, Peter Shank, Dan Burns, Joe Seborn, Dan Kabosky, Joe Marquardt, Fred Stockfish, and Chester Walczak, to show cause why they and each of them should not be punished for a civil contempt in failing to obey and disobeying the order of this court issued on the 5th day of October, 1949, having come on to be heard on the 16th and 17th days of January, 1950, before the Circuit Court of Milwaukee County, Branch No. 1, Honorable Otto H. Breidenbach presiding, and the

petitioner appearing by Thomas E. Fairchild, Attorney General, and Beatrice Lampert, Assistant Attorney General, and the respondents appearing by Max Raskin and William Quick, and the court having heard the evidence and being fully advised in the premises, does hereby make the following findings of fact and conclusions of law:

[fol. 171] FINDINGS OF FACT

1. That the order of this court issued in this proceeding on October 5th, 1949, was duly served upon the respondents, United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, and Arthur St. John, except that Thomas Lansing and Alvin Fuhrman were not personally served, at about 2:00 o'clock in the afternoon on Wednesday, October 5th, during an assemblage of members of said Local 18 at Bohemian Hall in the city of Milwaukee, Milwaukee County, Wisconsin; and that the respondent, Thomas Lansing, had notice that an order had been issued at about 3:00 o'clock in the afternoon of said day.

2. That said order commanded that the respondents, The United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Chester Walczak and Thomas Lansing to absolutely desist and refrain from calling a strike, going out on strike, or causing any work stoppage or slowdown which would cause an interruption of the service of the Milwaukee Gas Light Company or the Milwaukee Solvay Coke Company and from instigating, inducing, conspiring with or encouraging any strike, slowdown or work stoppage which would cause interruption of such service, and from picketing or causing to be picketed the premises of the Milwaukee Solvay Coke Company.

It is further ordered that until the hearing of said order to show cause the defendants, The United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, [fol. 172] affiliated with the C. I. O., Arthur St. John, Chester Walczak and Thomas Lansing, take immediate steps to notify all employees called out on strike to resume service forthwith.

3. The Milwaukee Gas Light Company is a Wisconsin corporation engaged in the business of furnishing light, heat, and gas to the public in Milwaukee County, Wisconsin.

4. The common stock of the Milwaukee Solvay Coke Com-

pany, a Wisconsin corporation, is wholly owned by the Milwaukee Gas Light Company; that at all the times involved in this proceeding, said Milwaukee Solvay Coke Company was engaged in the business of manufacturing gas which said product was used exclusively by the Milwaukee Gas Light Company; that said Milwaukee Solvay Coke Company supplied during October, 1949, 55 to 60 per cent of the gas distributed to the public by the Milwaukee Gas Light Company and at other times has supplied from 50 to 80 per cent of the base load of gas distributed by said Milwaukee Gas Light Company.

5. That a strike was voted by the employees of the Milwaukee Gas Light Company and that the date and hour for the commencement of the strike was fixed by the Bargaining Committee of Local 18 for 6:00 o'clock A. M. October 5th, 1949. That the bargaining committee is composed of nine members and that the respondents Arthur St. John, Thomas Lansing and Alvin Fuhrman are members of such committee. That the strike was continued after service of the order described in paragraphs or Findings 1 and 2; that none of [fol. 173] the respondents United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, Arthur St. John, Thomas Lansing, and Alvin C. Fuhrman took any steps to notify any of the employees called out on strike to resume service until about 8 o'clock on the morning of October 6th, at which time said respondents notified the employees that a settlement of the labor dispute between Local 18 and the Milwaukee Gas Light Company had been reached, that the strike had been won, and that employees should return to work.

6. That the respondents, United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, Arthur St. John, Thomas Lansing, Alvin Fuhrman, and each of them, disobeyed and failed to obey the order of this court entered October 5th, 1949, by failing and neglecting to take steps to notify employees of the gas company called out on strike to resume service forthwith.

7. That said acts and conduct were calculated to, and actually did, defeat, impede and prejudice the rights and remedies of the Wisconsin Employment Relations Board, a party in said action, which is charged by statute with the duty to prevent violations of subchapter III of chapter 111, Wis. Stats.

8. That the evidence does not sufficiently and clearly establish the knowledge of the other respondents above named of the scope and requirement of the court's order issued October 5th, 1949.

[fol. 174] CONCLUSIONS OF LAW

That the United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, Arthur St. John, Thomas Lausing and Alvin C. Fuhrman are, and each of them is, guilty of wilful and contumacious civil contempt.

That the evidence does not sufficiently and clearly establish wilful and contumacious civil contempt as to the other respondents above named.

Dated ——, 1950.

By the Court, Circuit Judge.

[fol. 175] IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

DEFENDANT'S PROPOSED JUDGMENT

The order of this court requiring the United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Alvin C. Fuhrman, Thomas Lansing, Peter Lupo, Charles Nutting, Al Helf, Cy Hackert, Ray Jonas, Charles Bauer, Al Snidoch, Peter Shank, Dan Burns, Joe Seborn, Dan Kabosky, Joe Marquardt, Fred Stockfish, and Chester Walczak to show [fol. 176] cause why they and each of them should not be punished as for a civil contempt in failing to obey and disobeying the order of this court issued on the 5th day of October, 1949, coming on to be heard on the 16th and 17th day of January, 1950, before the Circuit Court of Milwaukee County, Branch No. 1, Honorable Otto H. Breidenbach presiding, and the petitioner appearing by Thomas E. Fairchild, Attorney General, and Beatrice Lampert, Assistant Attorney General, and the respondents appearing by Max Raskin and William Quick, and the court having heard the evidence and being fully advised in the premises, and having made and filed its findings of fact and conclusions of law pursuant to said decision.

Now, upon motion of Thomas E. Fairchild, Attorney-General, and upon all the records, files and proceedings herein,

1. It Is Adjudged and Decreed that United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, Arthur St. John, Thomas Lansing and Alvin C. Fuhrman are, and each of them is, guilty of civil contempt for having disobeyed and in failing to obey the order made by the court in this action on the 5th day of October, 1949.

2. That as punishment for said contempt the United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, Arthur St. John, Thomas Lansing and Alvin C. Fuhrman, and each of them, shall pay a fine in the sum of Two Hundred Fifty Dollars ($250.00).

[fol. 177] 3. That as to the respondents, Chester Walczak, Peter Lupo, Charles Nutting, Al Helf, Cy Hackert, Ray Jonas, Charles Bauer, Al Snidoch, Peter Shank, Dan Burns, Joe Seborn, Dan Kabosky, Joe Marquardt, Fred Stockfish, the petition of the Wisconsin Employment Relations Board to punish for civil contempt be and it is hereby dismissed.

Dated ——, 1950.

By the Court, Circuit Judge.

TESTIMONY

ALVIN C. FUHRMAN called as an adverse witness by the plaintiff:

I live at 6308 West Beloit Road, West Allis and am employed by the Milwaukee Gas Light Company. I was so employed in the first week in October, 1949, as an excavating machine operator. My normal working hours during the first week of October were from 8:00 A. M. to 4:30 P. M. I am an officer of Local 18, Gas, Coke and Chemical Workers of America, District 7. I am Vice President, a member of the executive board and of the negotiating committee.

[fol. 178] The membership of the union authorized the executive board to call a strike. The membership was in such a turmoil because of our slow negotiations with the company that they demanded that a strike be held or pulled. The negotiating committee had been dealing with the Gas

Company for a new contract since the previous April. On or about October 5th the negotiation committee felt there was a demand by the membership for a strike. The strike was ordered by the negotiating committee as per the membership request or orders, on October 5th.

There was a reason other than the possible strike action why I personally would not have gone to work on October 5th. I might say that during the course of that week and the previous week, I had been in constant negotiations either with the company or our attorneys as to the federal case. It was very probable I might not have gone to work the next day, if we had other business to take care of.

Other than my duty to negotiate as a member of the negotiating committee, and other than strike action, there was no other reason such as illness or layoff, why I should not have gone to work at the Gas Company on October 5th.

On the morning of October 5th, 1949, representatives of the negotiating committee advised union members when they came to work that a strike had been set for that date, and they were advised that Bohemian Hall would be the headquarters for the strike. They were not told that there would be a meeting there of the workers that afternoon. I did not attend a meeting at the Bohemian Hall at 1:15 that [fol. 179] afternoon. I was not present at the Bohemian Hall that day.

I would not say I organized or captained any pickets. I was picketing as well as a number of other members. I might say because I probably was the top-ranking officer down there at the time, the police department contacted me as such and told me certain orders that had come from their district as to the number of pickets, the way they wanted them to picket, and so forth. I relayed it to the men and asked them to obey the orders of the police department.

I would say that one of the issues that the negotiating committee had discussed and suggested was that a picket line be set up before the premises of the Milwaukee Solvay Coke Company. I think any number of them went down there the morning of the strike themselves after the first shift of the Coke Company had come to work.

I did not see any deputy sheriff come to the picket line at the Milwaukee Solvay Coke Company and attempt to serve an order. It is very probable that I was on the picket

line at 1:30 o'clock in the afternoon, but we had three picket lines or three lines of men around there. I might have been at any one of them. There were three groups going at the same time at the Coke Company premises. These pickets were entirely or principally members of the union and employees of the Gas Company.

I think the Milwaukee Gas Light Company in that period had facilities to manufacture enough gas to supply the City of Milwaukee with if they deemed it necessary. They had [fol. 180] been using Coke Company gas. A substantial portion of their supply would be shut off if the Coke Company stopped producing gas.

Q. There is no question but what if the Coke Company operations could be stopped, it would have an effect—some effect upon the ability of the Gas Company to continue its gas service to the public in Milwaukee?

A. No, I don't think so, even if the Coke Company could have supplied all the gas necessary, because the maintenance and production structure of the Gas Company was not operating and that would have been the main factor in the Consumers not getting the proper amount of gas. The Coke Company doesn't have the pumps, and so forth, to push the gas through the mains.

Q. Normally, the Coke Company does supply a large proportion of the gas used by the Gas Company, up until the conversion to natural gas, is that right?

A. At that time, natural gas was in the process of being sent into a number of areas, probably a big share of the areas at that time, so I think the Coke Company product wasn't too important a factor at that.

Q. But it was a substantial factor, was it not?

A. I don't know.

Q. The general understanding was that it was important to the success of the strike to have a picket line at the Coke Company, is that right?

A. I don't think so, no, sir.

Q. But it was one of the activities of the strike which was agreed upon by the negotiating committee?

[fol. 181] A. I wouldn't say that. I don't think it was agreed upon definitely that the Coke Company would be picketed to the extent we would ask them to shut down.

Q. Was there some reason for putting a picket line at the Coke Company?

A. Naturally, we figured they were part of the Milwaukee Gas Light Company setup in this city.

It was probably felt that members of other unions who were employed at the Coke Company would be less likely to go to work if we had a picket line before the Coke Company, although we stopped nobody from going to work.

If I were to see a picket line I wouldn't pass it. That might be the opinion of the Coke Company members.

I learned directly that an order had been issued by the Circuit Court of Milwaukee County, ordering the union and some named individuals to desist and refrain from calling a strike and to desist and refrain from instigating, inducing, conspiring with or encouraging any strike, about 10:30 the night of the strike from Mrs. Lampert. I was in the picket line at the Coke Company when I learned it.

That was an unusual circumstance. I had been in Judge Tehan's office negotiating with the Mayor and Judge Tehan. I was requested to go to the Mayor's office at the City Hall. From there they asked me to come down to the picket line. I met Mrs. Lampert, and she told me of the order requiring the men to go back to work, the officers of the union should [fol. 182] order them to do that, and so forth, but I wasn't actually on the picket line. I had been down there because of the fact some solvay men refused to walk through our picket line. They asked me to come down to see if relief couldn't be given to those fellows by talking to the men and telling them to go in and maintain their plant.

I left the picket line around 3:00 or 3:30 in the afternoon, and went into the negotiating group. I didn't meet any of the members who had been present at the meeting. I met a couple of other ones.

Q. Was any reference made of the issuance of the order by the Circuit Court?

A. I believe there was, yes, sir.

Q. At the meeting of the negotiating committee?

A. There was no meeting of the negotiating committee, only a couple members of the committee plus perhaps a few other members of the union, general members of the union.

Q. At about what time was that?

A. I'd say late in the afternoon.

The Court: Of October 5th?

A. Yes, sir.

Q. You understand at that time that an order had been issued by the Circuit Court forbidding the strike, is that right?

A. No, sir.

Q. What did you understand about the order?

* * * * * * * *

The Court: Suppose you ask him when he became aware of the fact there was an order issued, what the source of his information was.

[fol. 183] By the Court:

Q. How did you first learn there was a court order, Mr. Fuhrman?

I wouldn't say I learned definitely there was a court order requiring the men to go back to work and things of such nature. The issue was so mixed up by the fellows that came down and who evidently didn't understand what the order was that was read off to them, any number of them. I don't think I could form an opinion as to what it was. First I learned of it I understood any number of things, Art. St. John and Chester Walczak got pinched, and that stuff. I heard that, I would say, previous to 3:30 at the Milwaukee Solvay Coke Company plant from fellows coming down evidently from the meeting.

I believe somebody told me a deputy sheriff had tried to read off something down there but nobody listened to him. I didn't make any attempt after that to find out what order might have been issued.

Q. Then it is your testimony your first complete knowledge of what was in that order and its effect came about 10:30 at night when Mrs. Lampert talked to you at the Coke Company premises?

A. I am in error there. It was probably 7:00 o'clock in Judge Tehan's chambers.

Q. From whom did you learn it there?

A. Mayor Zeidler and Judge Tehan.

Q. And after 7:00 o'clock in Judge Tehan's chambers you continued for several hours participating in negotiations toward settlement of the strike, is that right?

A. All night.

[fol. 184] After several hours I went down to the Coke Company again because the personnel man of the Coke Company had called the Mayor's office and said that Solvay Coke Company would not walk through our picket line. He said the maintenance men in the plant were tired out and couldn't shut the plant down or didn't want to or perhaps wouldn't be responsible. We didn't want that. I don't think anybody would. The Mayor asked who had been down to the picket line during the day and had contacted any of the fellows. I think I was picked out as one. I went down to the Mayor's office with the secretary, I believe Stanley Budny. We tried to contact the Coke Company to see what was wrong over there. That was practically impossible; the telephone lines were jammed up. I drove over there. It was there that the situation was explained to me, and I told them, any number of them, if they wanted to go in there we had no objection to walking through the picket line. I think I talked to the business agent of the union. He said they didn't want to be scabs and walk through it. I said probably this situation is different, we don't want the plant shut down and fall to pieces either. He said if it is agreeable to you. I said we haven't stopped any of your men from going through. I understand they took in a number of men, and Mrs. Lampert was to have made the statement we couldn't stop any of them. We didn't stop any of them, and we didn't try.

We had an understanding with the representative of the workers at the Coke Company that we had no objection if their men went in for the purposes of maintenance only. [fol. 185] Maintenance of that plant as it stood at that night included operation of the plant to a certain extent. You couldn't let the plant shut down without making gas. It had to go someplace or into the mains or I think Mr. Brill was the man I talked to that night at the Coke Company, Wednesday evening.

Q. Did you tell him you would be willing to let the men in to maintain the plant as long as no gas was sent to the Gas Company?

A. In the afternoon, no. In the evening, perhaps I did. I correct myself on that. I said it was our intention that gas would not be made to the point of full production, but it must be kept in the mains, and we wanted that, because that

would be an expensive item to the Gas Company, and it would come out of my pocket in the end or the consumers' pocket. You can't leave the gas out of the mains and start up again.

We were willing to maintain some production, but not complete production. After 10:30 or thereabouts, I spoke to Mrs. Lampert and went back again and stayed the rest of the night, or most of it, in Judge Tehan's chambers in connection with negotiations.

Q. At that time, was it your understanding that unless a negotiated settlement was reached your men would not go back to work in the morning?

A. I wouldn't say that. I told the men to go home that night after Mrs. Lampert talked to me. What they did the next day was their own business. I didn't order them to come back there or go back to work.

[fol. 186] It was not my understanding that unless a negotiated settlement was reached during that night that the men would not go back to work the next morning. As to my personal intention, that depended upon the outcome of the negotiations in the Judge's chambers. Personally I might not have gone back to work if a negotiated settlement had not been reached.

I do not remember if I made a statement to Mrs. Lampert that the reason for maintaining the line was to give notice to the employees of the Coke Company so that they would not go to work. Very possibly I might have. I asked the pickets to leave after Mrs. Lampert talked to me. I wouldn't say I had been advised officially that the Coke Company people would not go into the plant anyhow even if we did leave. Any number of employees told me they would not go to work. That didn't mean their leaders had advised me to that effect. Some of the people around the premises had told me that they wouldn't go in even if the Gas Company workers withdrew the picket line.

The strike was settled by agreement some time in the early morning hours of October 6th.

Q. Now, after you knew of the order of the Circuit Court, do you believe that you obeyed it?

A. That is a pretty hard question to answer.

Q. Did you do anything with respect to getting the people back to work or trying to get the strike terminated in accordance with the court's order?

A. It wouldn't have done any good that night any more, I doubt it, there were very few men who were to go back [fol. 187] to work at that hour.

Q. Is it your claim here that you did not violate the court order after you heard about it, is that the substance of your claim?

A. Individually I don't believe I did.

Q. And your explanation then for any failure on your part to obey it was simply any such action took place prior to the time you knew about the court order, is that right?

A. Would you repeat that, please?

Mr. Fairchild: Perhaps I could simplify it.

Q. That any violation of the court order that you personally took part in, you claim that happened before you knew about the court order?

A. I believe that's right, yes, sir.

I would not say there was any person who was recognized as being in charge of the picket line. Probably because I was the highest member of the union down there, I was contacted more frequently as to a number of things than anybody else, and I believe some of the other members of the executive board, and so forth, who were down there were contacted at times too, but perhaps not as frequently as myself. There was no one we would call the captain of the line or anything of that sort.

As I say, when the police department did have an order and seen me around, they came to me. I know a member of the Gas Light Company and member of the union by the name of Joe Saborn. I believe he was on the picket line. [fol. 188] I do not recollect hearing Saborn announce to everybody, at least in a voice loud enough for the people to hear around there, that the coke workers had guaranfeed not to go into the plant if our line was disbanded.

I know Pete Lupo by sight, not personally. He was on the picket line. I don't know whether he was there until the line disbanded. I don't know Charles Nutting. I know who he was, but if I said I picked him out there, I would be a liar. Al Helf was probably there I think. I don't know whether he was there in the evening.

I don't know Cy Hackert, or Ray Jonas. Charles Bauer was there at the time I was there in the afternoon, but not in the evening. I had seen Al Sniadach during the course of

the day. I don't know Peter Schank very well. I think Dan Burns was down there, yes, sir. I believe Saborn was there in the evening and was there in the afternoon also. I don't recall seeing Dan Kaboskey, or Joe Marquardt or Fred Stockfish.

HENRY C. RULE, called as a witness by the plaintiff:

My name is Henry C. Rule and I am a member of the Wisconsin Employment Relations Board, and was such member on October 4th, 5th and 6th, 1949.

* * * * * * *

Examination.

By Mrs. Lampert:

Q. I believe that you testified Mr. Fuhrman—first, I think you testified that the man you pointed out in Exhibit 1 had [fol. 189] a conversation with some Coke Company employees, then came back to the picket line and said they could go home, the coke workers wouldn't go in anyhow?

A. That's correct.

Q. Was Fuhrman's statement about disbanding the line before or after that occur-ed?

A. His statement about disbanding the line was—he made that statement to the coke workers and also the pickets themselves.

Q. You testified Mr. Fuhrman said they would have to disband the line or do you mean Mr. Saborn?

A. Mr. Fuhrman. My testimony is Mr. Fuhrman told the pickets they would have to disband.

Q. When did he tell them that, before or after this episode you testified about relating to the man in the plaid coat who talked to the coke workers?

A. Before.

* * * * * * *

Raymond Hunholz, testimony not material.
Foster Stanfield, testimony not material.
Alphonse Thomas Sniadach, testimony not material.
John William Ahlhauser, testimony not material.
Daniel A. Burns, testimony not material.
Robert J. Riordan, testimony not material.

[fol. 190] Peter Schank, testimony not material.
Daniel Kaboskey, testimony not material.
Joseph F. Marquardt, testimony not material.
Fred Stockfish, testimony not material.
Alfred Helf, testimony not material.
Joseph Saborn, testimony not material.
Chester Walczak, testimony not material.

Thomas Lansing, called as a witness adversely by the plaintiff:

My name is Thomas Lansing and I live at 2779 South Superior Street, Milwaukee. I am employed by the Milwaukee Gas Light Company in the capacity of an industrial gas fitter, and was so employed the first week in October, 1949.

I am a member of Local 18, but not an officer. I am a member of the bargaining committee, but not a member of the executive committee.

During the period from April to September, 1949, the bargaining committee carried on negotiations with the representatives of the Gas Company for a new contract. The membership of the local authorized the calling of a strike on several occasions. That authorization was given about four times in September, 1949, and that authority was given to the bargaining committee.

On October 4th, the bargaining committee, by vote, decided to call a strike. All of the people on the bargaining [fol. 191] committee might not have wanted to strike, but there was a vote by a majority carried. I was present at that meeting. Those bargaining committee members associated with a certain department were given the job to take care of their certain department as to picketing. I personally did recruit some group of pickets and picket signs.

I was at the meeting in the Bohemian Hall the next afternoon part of the time. I was not present when the deputy sheriff served the papers on Mr. St. John and Mr. Walczak. I learned that he had served some papers on them about an hour later through a telephone call. I don't remember who told me. I think it was Mr. Fuhrman. That would be about 3:00 o'clock in the afternoon. In reference to the strike I went from picket line to picket line and met with the people on the lines and my purpose was to give them moral support or something like that. I did not tell them an injunction had been served. That matter was not discussed at any time when I approached the pickets.

I was present at the negotiations in Judge Tehan's office and spent the night in those negotiations. Up until the time that the settlement was reached as a result of those negotiations on the morning of October 6th, I made no attempt to call off the strike or to call the workers back to work. The picket lines that I visited included the one at the Coke Company plant. At the time I was there no deputy sheriff was at that place.

When I was in Judge Tehan's chambers, then I heard from one of our bargaining committee members that some [fol. 192] papers had been served. That was some time later and I want to get this picture clear, if I may. That at no time was I ever served with any papers or did I see any papers served. All I had was hearsay as to the servicing of papers on this group and that group. That's all. I did understand, however, that a Circuit Court order had been served on some other individuals, and that the order forbid the picketing at the Coke Company by our union.

Q. Do you have any explanation that you want to make to the court as to why, after you heard about the issuance of the Circuit Court order, you continued to encourage picketing and did nothing to recall the people back to work?

A. I would welcome the opportunity, Mr. Fairchild. Appreciate from the expiration of our contract—not from the expiration but from the reopening of our contract—April passed, May passed, June passed, July passed, August passed, it came into September. We met with the company, who were in a position through the use of a law, which I believe is vicious, to stall and delay negotiations, necessitating the use of attorneys and costing our local union much money; when, in talking to management, the vice-president who dealt with us would laugh at our requests. Personally, I became discouraged, and I do believe other members of the bargaining committee did, too. I do believe if the company would have been at least tactful that a strike never would have occurred at the Milwaukee Gas Light Company. All these things infiltering into the people of our union, and feeling that they would gain nothing through peaceful collective bargaining, gradually the bargaining committee was [fol. 193] urged and pushed into a position where they had no recourse but to lead the people who were very willing into a strike situation. These things grow and develop and gets into a snowball and gets big and sometimes outgrows

the people who lead it. I think that is what happened with our local union. I do believe today if the same situation again happened where a company refused to bargain collectively on issues such as pensions, which they promised for years, that again the same strike situation would arise. People who work for labor and are interested in labor don't like to break laws, but sometimes these companies force you into a position where you must to save what you have left of your reputation. That's all I wish to say.

Q. Did you, after learning of the order of the court, state to some representative of the C. I. O. News the statement which I will read or anything of like substance or character: "We expected to be arrested for violating the injunction, and we were prepared for it. We do not have a 1-man union, and our members knew what to do if the first line, then the second and the third was hauled into jail."

A. I didn't make that statement to a member of the C. I. O. News. I made that statement to our people at the union meeting.

Q. When was that meeting?

A. Some time prior to the—I am not too sure whether it was just prior to the strike or the night of the strike vote. That statement may sound like ours is a communistically inclined union—I don't like that language—but it isn't; I assure you of that.

Q. Was the quote I read to you substantially what you said?

[fol. 194] A. Substantially what I said to our people at the union meeting in an address I made to the membership.

Q. Was that before or after the strike occurred?

A. I believe it was prior to the strike. I am not too certain about that, Mr. Fairchild.

Q. I call your attention to the part of it that said: "We expect to be arrested for violating the injunction," and I just raise the question whether you believe that you said that before the strike and before the injunction was issued?

A. I don't know whether I mentioned in my talk to the people about an injunction. It is evident then that I made that statement to them—it couldn't be because I didn't talk to these people after the strike was called. It must be prior to that, and at that time there was no injunction. Mr. Fairchild, I previously testified that I left that meeting prior to the—or just at the time of the entry of the deputy sheriff

who eventually served the papers. That was the meeting after the strike was in effect, and I made no talk at that meeting.

* * * * * * *

By the Court:

Q. Mr. Lansing, the talk to which your attention was just called you say was made prior to October 5th to the members?

A. Yes, your Honor. Whether this quote is right about this injunction, that I don't remember. On the face of it, it would seem there was no injunction at the time, and I certainly couldn't talk about something that was not there. [fol. 195] Q. Do you recall what time you made that statement or substantially that statement?

A. Very shortly prior to the calling of the strike.

Q. That would be before October 4th?

A. Yes.

Direct examination.

By Mr. Raskin:

I have been a member of Local 18 at the Gas Company since 1936 or 1937. I was a member of the American Federation of Labor while working for the Milwaukee Gas Light Company. I have been a member of District 50 associated with the United Mine Workers of America. There was a change and I became a member of the United Gas, Coke and Chemical Workers, CIO. I have been working continuously for the Gas Company 17 years, and approximately 23 years in all with prior service record. I am married and have a family.

The previous year I was president of the local union. Two years prior to that I was also president of the local union, and I have also been vice-president of the local union prior to that. I have taken an active interest in the affairs of the union since I have been a member of it. It was a part of my life. I was very much interested in the union.

I have been a participant in the negotiations between the company and the union. The union had a contract with the company since 1937 and the last one expired June 1st, 1949. We had a reopening date that if we wished to change the

contract, we had 60 days to file notice. That was done. The negotiations had been entered into between the company [fol. 196] and the union with respect to a new contract after June 1, 1949, some time in April, 1949, and notice was given to the Federal Mediation and Conciliation Service. We met with the Conciliation Service. I would say there were some thirty odd meetings between April 1st, 1949, and October 5th, 1949.

There was no substantial progress made as to money, nothing. These things were contingent upon settlement of the contract—extended vacations, that was about all; progress was virtually nil. On September 16th, 1949, a point was reached in the negotiations where the company refused to engage in bona fide collective bargaining altogether, as a result of which it was necessary to file a charge with the National Labor Relations Board, and the union did so.

Those charges are still pending before the National Labor Relations Board. About September 16th, 1949, the State Employment Relations Board sent Mr. John Roe, a conciliator. Mr. Roe and the union and the company met on a few occasions to try to settle the differences between the parties. He acted as a mediator. The union requested Mr. Chamberlain, the president of the company, and the people in responsible positions, to sit in. We felt the company was sending errand boys to do a man's job.

Mr. Chamberlain never sat in on these negotiations, except on one occasion he invited us to a dinner, and at the dinner he suggested we sign the contract and hurry it up and everything would be all right. Of course, that wasn't [fol. 197] negotiating. He invited us to dinner and thought we would sign the contract.

Mr. Imse never did sit in on the negotiations. We urged Mr. Roe to request Mr. Chamberlain to take part in the negotiations, and it was my understanding that Mr. Roe did so. The union was certified by the National Labor Relations Board as the certified bargaining agent on June 24th, 1943.

My work has no relation to the production or manufacture of gas. It has some slight relation to transmission in the places I would ordinarily work in the building proper. My absence from work would not in any wise affect the service of gas to the constituents of Milwaukee County.

I was engaged in union affairs the week of October 3rd, 1949. I recall being in negotiations on Monday and on Tues-

day, and then in the Federal District Court chambers that afternoon. We were in negotiations on Wednesday, October 5th, from the late afternoon, until about 9:30 the following morning. I had no sleep. I think we were sold short because I didn't have enough sleep. I was not in any condition to go to work on October 6th. I returned to work the following day, October 7th, Friday.

In my experience as a responsible official of the local, I could tell from the actions and tenor of the people, no matter what you done, the spirit was there; the discouragement was there, and the desire to strike was there; you couldn't stop it. It was made so evident on the day following the conclusion of reaching an agreement between the [fol. 198] committee and the company. When I went to my own people on the picket line, and I asked them to go back to work, and it was raining, and the people were soaking wet, and it was cold, and they wouldn't leave the picket line; they wouldn't even believe me that the strike was over. So I am sure that no matter what any officer would have done, that there was no stopping the rolling of the snowball.

The only effective way to get these people back to work was a meeting of minds between management and the union as to a settlement of contract. That was the only recourse. I don't believe the company took any initiatory step to engage in collective bargaining on October 5th.

By Mr. Fairchild:

Q. Did you take any initiatory step on October 5th toward a settlement with the company?

A. Yes, I sat down with them and talked to them in the meeting.

Q. At the request and invitation of Mayor Zeidler and Judge Tehan?

A. Yes. Of course, we in the committee had urged a meeting with management. We thought that was the only way. You can't keep the people on the streets. You have to get together some time sooner or later; the sooner the better. I don't know whether St. John contacted the company to have a meeting, but I think it was urged that we do so.

I don't know whether anything was done specifically to call a meeting except what was done by Judge Tehan and Mayor Zeidler.

Albert P. Mueller, testimony not material.
[fol. 199] Alfred Brill, testimony not material.
John C. Golender, testimony not material.
Peter Lupo, testimony not material.
Charles George Nutting, testimony not material.
Cyrus C. Hackert, testimony not material.
Ray Jonas, testimony not material.
Charles Bauer, testimony not material.
Arthur St. John, called adversely by the plaintiff:

My name is Arthur St. John and I was employed by the Milwaukee Gas Light Company in October, 1949, as a serviceman working out of the service department. My normal working hours were from 7:30 to 5:30. I am a member of the executive board, bargaining committee and the president of Local 18.

The testimony of Chester Walczak as to negotiations carried on by the bargaining committee and as to all the events up to the time of the service of the order at Bohemian Hall is substantially correct. We told the people that the order—what it read, and requested them to go back to work, but at that time we realized that either a further request or a command would be of no avail because of the attitude, so at that time we suggested through our attorney to request the Mayor of Milwaukee to prevail on the company to bring them back into negotiations because we believed [fol. 200] that was the only way we would ever get them back to work and the quickest way.

We went down to the attorney's office, and he had contacted the Mayor's office. After that program had been set up, men were detailed to go out and get the rest of the bargaining committee. There were four or five. We went to the city hall, and the understanding was with those people detailed to get the rest of the bargaining committee that we would meet in the lobby and go into the Mayor's office in a group. Having waited there thirty or forty minutes, we went into the office and found out they didn't get there, so the Mayor at that time requested we be back about 7:00 o'clock. We left and went out to round up the members ourselves. In the course of that, we had contacted the attorney, and he had told us that the place had been changed, to meet in the chambers of the Federal Judge Robert Tehan. We then, after having a bite to eat, proceeded to the chambers of Judge Tehan where we spent the night in negotiating.

Q. I take it that at no time up until the time of the settlement did you make any further effort to notify the people to come back to work or off the picket line?

A. I think you can appreciate that was very—quite an ordeal of negotiating a contract or what we couldn't do in six months we negotiated in 13 hours, and it was quite a deal; it was a tough deal, after being up all day and night. We didn't have too much time to get out of there. In fact, we didn't think of it. Our concern was getting a contract and getting to the point where we could send the men back to work.

[fol. 201] Q. It is a fact, whatever the reason, that no attempt was made to send out such notice?

A. Appreciate this, that the officers of this CIO is not identical to AFL. The officers in this local don't have any power other than to recommend. The power to call a strike or approve a contract lies with the membership. The membership is the governing body of this local union. So although in essence we may have named the hour of the strike, they actually called it by their vote, and it is the same in sending them back to work; they must approve what we done to go back to work. After the negotiations of that morning, which was completed some time about 8:30, 9:00 o'clock, Mr. Walczak and myself went over to the attorney's office where an arrangement had been made with the Milwaukee Journal to make a recording by myself, stating that the fellows—the strike was ended, and the people should go back to work, and I believe also that we called a meeting in that same announcement for that night of the membership to approve or disapprove of the contract as we had accepted it. After that recording, after having a bite to eat, we then—Chester Walczak and myself—made a tour of all the plants and also the Coke Company; there were no pickets there, but there were some people around, mostly servicemen who reported to work on hearing the radio report, and they were sent home because of the fact they didn't need any servicemen. We inspected the plants; found all the boilers had been started; contacted the vice-president in charge of that operation and stated we were out there and seen that the pumps were manned and men there to do the work. That was immediately after 12:00 o'clock [fol. 202] or thereabouts. That evening we had a meeting,

as I stated, and the agreement as we accepted it was approved by the membership.

After the Bohemian Hall meeting, the first time we sent notices out to the people to come back to work was after the settlement. The union membership comprises both the people in the service department and the people who actually operate the pumps and engage in the manufacture and distribution of gas. Some of the actual production and distribution people, members of our union, did stay away from their work during the course of this strike. No doubt it is on record, although I wasn't there during the strike to see who was there. It would be only hearsay for me to say they stayed away.

I believe Exhibit 12 is the paper which the deputy sheriff read to me and of which he gave me a copy, at Bohemian Hall, except I do believe the name of Lawrence Gooding was in there and not Henry C. Rule. I don't believe Henry C. Rule was on there, if my memory serves me correctly. I don't recall that at all. I remember it was all printed, to my knowledge, that the name was Lawrence Gooding and not Henry C. Rule. The place I mean is where Henry C. Rule has been written in pen.

My average earnings are approximately $65.00 per week.

Q. I believe you covered the explanation that you have as to why you took no additional action to comply with the court's order. Do you have any further explanation you want to make?

[fol. 203] A. I have none. That consumed all the time from the time that the deputy sheriff had served the papers until we got into negotiations. We were busy every minute. You appreciate it took some time to get to the attorney's office, to make contact with the Mayor, to agree to these things, to go out get the bargaining committee spread all over the city, and get something to eat, and get back in a matter of three, three and a half hours.

Examination by Mr. Raskin:

I am 49 years old and am married and have worked for the gas company for 25 years continuously. The work I performed in the early part of October had no relation to the production, transmission or manufacture of gas. I have belonged to this union since 1937. The company and the union had contracts from year to year since 1937. The last

one, prior to the one that had just recently been negotiated, expired on June 1, 1949. A 60 day notice of termination had been given by the union for the purpose of engaging in negotiations with the company to begin in April, 1949.

We had been in negotiations with the company from April, 1949, until the morning of October 6th, 1949. When we are engaged in negotiations as a representative of the union, we are free to absent ourselves from work with the company. We have engaged in continuous negotiations since September 16th, 1949, almost daily, until the contract was concluded on the morning of October 6th, and for that period of time I was free to absent myself from the work with the consent of the company.

[fol. 204] I was in Judge Tehan's chambers on Tuesday, October 4th. We were engaging in negotiations, on that day and the day before. The union had taken a number of votes with respect to securing an expression of opinion from the membership as to how they felt about going out on strike.

Q. Was it your opinion and the opinion of the bargaining committee and the membership that the company, by virtue of the statute that was on the books in Wisconsin, felt that the union would never go on strike and therefore could afford to be very nonchalant about their negotiations with the union?

A. I think in this respect that we admit the management met with the U. S. Conciliation several times. Although there were two commissioners there, they could not get the company to deviate from their way of negotiating. They didn't wish to negotiate on any article but one, and they would not hold that in abeyance and go to any other article. From that you could appreciate how tough it was to engage in collective bargaining. At the end of some time, the U. S. Conciliators threw up their hands and said, "We can't do no more." Later the state appointed a conciliator, who we recognized not as a conciliator but as a friend of labor, having met him before and knowing of his capacity and his prominence, and we accepted him as a friend to see if he couldn't get the company to negotiate in a good collective way.

This was Mr. John Roe. At the expiration of some two weeks, he threw up his hands and said, "They won't move," so we were up against a stone wall, and after making these

many reports, after some 40 odd meetings, the membership was more or less tired of hearing or spending money to send a committee up there and coming back with nothing, and I [fol. 205] think it left them in much despair and discouragement, and I think that was, well, the crux of the reason for the strike.

In the presence of John Roe, the conciliator—although we did not accept him as a conciliator, they sent him as such—we had informed the attorney and the company that were sitting in on the negotiating that we had taken three or four strike votes, and that I told them it was getting pretty tough; these people definitely demanded better negotiations or I was afraid we couldn't hold the men, the committee or nobody else. They reached that stage where they were ready to walk out. Mr. Swanson, the attorney for the Gas Company in the negotiations, made the statement, he said, "Your fellows wouldn't go on strike," he said "I don't think you would."

I recall the votes on the strike. One vote was I think 389 cast for and there was 15 noes, and 2 void. There was a voice vote taken of 536, which was unanimous. And later we took a vote, more or less on cafeteria style, we went to the different places and sealed the boxes and brought the votes into your office and had a reporter or two from the Sentinel come over and open those up and count them in their presence. That vote was almost I think 600 and something for, and 4 or 5 opposed to it.

I was at Bohemian Hall when the papers were served on me. The officer seemed pretty nervous, and you can't blame him for being that way, but he did make the statement, "I'm awful nervous," and I did ask him to slow up and take it easy, everything would be orderly, not to pay [fol. 206] too much attention to the shouting; as far as physically, he had no worry.

Q. Did he read the paper loud enough for others to hear him besides you and Chester Walczak?

A. To be absolutely honest, I didn't even hear him read that audibly myself. At times I did. He didn't read it loud enough for me to hear.

I told the members who were present at Bohemian Hall that the order required them to go back to work. As I previously stated, from their attitude I realized further requests or further commands would not get them to go to

work, so what we thought was the best idea to get them back was to get back in negotiations and follow that trend, and which we were successful in doing later. I left Bohemian Hall about 2:30 or thereabouts.

I received a call just about that time to come to your office. That is the first place I went after leaving Bohemian Hall. I believe there was Walczak and myself, Sheehan and Cardinal. I believe that was the four that came. At that time we were told that arrangements had been made to meet in the Mayor's office. I detailed two fellows to go out and round up the rest of the bargaining committee. There are 9 members on the bargaining committee. We went over and waited about 30 minutes in the lobby of the city hall where I had said we would meet the rest of the committee. We waited there some 30 or 50 minutes, then went up into the Mayor's office and, well, it was then about 7:00 o'clock or close to it, so the Mayor—first, I told him I didn't have [fol. 207] a chance to get the rest of the bargaining committee together so I told him I would go out and get them. He said we should do that and be back at 7:00 o'clock.

When I came to your office you told me that after conferring with the Mayor he directed you to get us over at the city hall since he was also making a contact with the company or trying to. We did not confer with the Mayor at our first meeting that afternoon with him. We found that the plans were changed, and that we were to be at Judge Tehan's chambers at 7:00 o'clock that night.

The entire committee was there. We finally rounded them all up. Mayor Zeidler was also there, and the U. S. Conciliation Commissioner Murphy. Mr. Gooding appeared there at one time. I don't know how long he was there. The representatives of the company were in another room and Judge Tehan was sort of going from one place to another.

I believe it started out that way, although I didn't see them in another room, we understood they were there. Later I believe they went to the office, and negotiations were carried on by liaison between the Judge's chambers and the Gas Company office. The final agreement for the strike settlement was signed about 8:25 on the morning of Thursday, October 6th. We immediately came to your office and made arrangements for a broadcast to notify all of the Gas Company workers to return to work immediately and also to come to a meeting that night for ratification of the settlement.

Q. Would it have been of any particular practical or any effective value to spend the time that you spent in rounding [fol. 208] up your negotiating committee for the purpose of engaging in negotiations, to round up the negotiating committee for the purpose of informing them again about the court order and try to get them back to work?

A. I don't think that it would have been to any avail. As stated before, we wouldn't have the authority to command; we only have the authority to recommend their own approval, and realizing that policy of the CIO, we realized had we went in and got an acceptable agreement and present that agreement at a meeting, that would be the quickest and best way to get the men back to work.

Q. As a matter of fact, isn't it true even after the strike settlement, and after you had made the recording but before it was broadcast over the air, some of the pickets remained on the picket line, and it was necessary for you and Chester Walczak and even Judge Tehan, and I think Bill Quick, to make the rounds of the various picket lines?

A. Yes, we did. We definitely informed them the strike was over, that they should go back to work or go home, but definitely there was to be no more picket lines, to abolish all of them. We did that and made sure, stayed there until everybody was gone.

From Tuesday morning at 5:00 A. M. I did not get to bed until 3:00 o'clock Thursday. I was up again at 5:00, and in between that I answered a few phone calls. Then after that there was the meeting as arranged at Bohemian Hall at 8:00 o'clock; I presented the memorandum agreement as was accepted tentatively by the committee, and after much discussion it was voted on and accepted by the membership, and that was 11:00 o'clock or close to it.

[fol. 209] After I got up at 5:00 o'clock Tuesday morning, I went to bed about 1:00 o'clock Wednesday morning and the next time I went to bed was Thursday afternoon at 3:00 o'clock. When we were in Judge Tehan's chambers on Tuesday afternoon about 3:00 or 4:00 o'clock, Mr. Fitzgibbon of the Wisconsin Employment Relations Board was there. The judge had already signed an order to show cause and we were discussing the matter of when this order was to be heard. During the process of negotiations within the last few weeks we had received petitions from large numbers of members asking that a strike be called or to take some other action.

What we were unable to accomplish in bargaining and negotiations around the table from April until the morning of October 5th, you accomplished when you entered into the last phases of negotiations which took 13 hours, beginning at 7:00 o'clock, October 5th, and terminating at 8:30 the next morning.

Examination.

By Mr. Fairchild:

The conference in Judge Tehan's chambers on October 4th was with respect to the Federal action. We were asking for a decision on that enjoining the Wisconsin Employment Relations Board from injecting themselves in our negotiations.

The strike was not called by the bargaining committee. A strike was called by the membership, but the hour of the strike was set up by the bargaining committee, and was decided on at the meeting in the evening of October 4th, after [fol. 210] the meeting in Judge Tehan's chambers. The issue of whether or not there would be a strike was not discussed at the time of the meeting in Judge Tehan's chambers.

By the Court:

Q. Mr. St. John, will you state, as nearly as you can recall, just what you told the meeting at Bohemian Hall after the service of the papers?

A. There was a large amount of disorder. It was a mass meeting; it was no planned meeting. To further show it wasn't, we permitted everybody in there; there was photographers and reporters; and any of our regular meetings is restricted to members only. So it was more or less a mass meeting. There was no regular business carried on; no motions; no recording secretary; it was more or less of a place to assemble to find out what the feelings of the people were. I found that attitude was more or less on the bitter side, and to try in any way to—any ordinary way to get the people to go back to work—as stated before, I stated and so did the international representative state that the order requested them to resume work. Realizing it was of no avail to request or command the people at that time, we thought

the best thing was to force or prevail—have somebody with prominence prevail on the company to get back into negotiations, then by presenting even a partial agreement in a meeting, we could get them back to work. We thought that was the quickest, the best way and the surest way to get them back. After these many meetings and reporting nothing, no progress made, as I said before, the people were becoming discouraged. They thought it was just a matter of a pushing around the forgetting about the things that we wanted. One of the things that made this a tough negotia- [fol. 211] tion, we had for some ten year- had stipulations of agreement that if and when there was an entry of natural gas, they would give us an adequate pension, and we felt that natural gas was in our mains, and the company should live up to their agreement because we have those stipulations signed by a former president, who is now dead, but we had that stipulation that they would do that on the entry of natural gas. Their tale for many years was that the manufactured gas business was not profitable because of the high cost of materials to make gas, but in natural gas there was a lot more profit, and when we got natural gas, we would get it, but we were stalemated on the issue of a pension. They offered us a pension we knew little or nothing about and had little or no confidence in because it was a Canadian company. We thought what we wanted—this was a pension plan that was specifically on 65 years of age—we felt that we would like to negotiate in a way to know how much money they were going to set up and, as we have agreed now, to request different plans, one embracing years of service, say 35 and 65 years of age, whichever occurs first. They told us before we move on to anything else, we are going to settle on this pension plan. We said we don't agree we want that pension plan. That took months. That was the crux of the conciliation; they couldn't get them to move out of that. We said to put the pension plan on the side and talk about a raise. They said no. That is the reason we have preferred an unfair labor practice charge against them, because they didn't bargain in good faith. In fact, the representative sent by the conciliation commission of the State, Mr. Roe, he didn't believe it was good collective bargaining—"Here, first you accept this before we talk about anything else"—and we [fol. 212] thought like many of the laborers, like one said

here today, it was a way of getting around the thing they said they would do for us, give us a pension on the entry of natural gas; and then create confusion and bitter feeling. We thought after patiently waiting all these years we would accomplish a pension and one that we could more or less set up in the way as they are doing it now—here is so much we will put in, and you just show us a pension plan agreeable to the company.

Q. Mr. St. John, you did not say one word to the membership assembled at Bohemian Hall, requesting them to go back to work?

A. I stated that the order stated—that the court order states they should resume work.

Q. Did you advise them to resume work?

A. I advised them, sure, but I stated it was of — avail to either request or command.

Q. What did you say?

A. I told them that is the law, the court order so states, they should go back and resume their work as it stated. I read it; I read the last paragraph.

Q. Did you offer your own advice?

A. It was not an orderly meeting; some come in and went out. As I stated before, realizing the impossibility of getting them back, in that respect my opinion was of no avail. You see, I wouldn't have any right to command or tell——

Q. Could you advise?

A. I can advise; I could recommend.

Q. Did you advise at that time?

A. Yes, to the extent they should go back to work.

[fol. 213] Q. Just what did you say?

A. I told them—I read the last paragraph.

Q. You read the order?

A. Yes.

Q. Did you offer them any advice as to what they should do?

A. When I read that, there was so much shouting and hollering I couldn't hear myself any more. They started to file out then, and out they went, so it was our concern——

Q. You mean you had no opportunity to say anything further?

A. No, there was no opportunity. Part of them were sitting down; the majority of them were milling around and

talking here, talking there, talking all over. It was not a planned meeting. Knowing these people as I did, I believed the only way we could do was to at least present them with a partial agreement or with assurance that we are in negotiations in good collective bargaining with, I might say, the pressure of the Mayor or some prominent person; that was the thought.

Examination by Mr. Raskin:

The meeting in Bohemian Hall on the afternoon of October 5th was not a regularly called meeting. That was merely a mass meeting or a place—a meeting place for our headquarters. I don't think a vote could have been taken. There was too much disorder. Any time you talked—when I even spoke of what the order said, I was answered with a lot of shouts and noes, booking. Before I even got another thought in my mind, the meeting started to break up; they started [fol. 214] to leave. The next thought was, as stated, it is of no avail to do this. Something has got to be done to get them back to work, but to tell them to go back just not to any avail; they didn't respond; they didn't abide by what they were told to do.

There were no records kept as to the number of people there. No notices were sent out for the assemblage of those people by the officers. It was simply a place where the people understood that they would meet some time during the day of the strike. There were no minutes kept of that meeting.

Examination by Mr. Fairchild:

Where that meeting got its origin I couldn't tell you because I was informed some time about 11:00 o'clock there was a lot of people going to Bohemian Hall, and that I should be over there, and I got over there some time after 1:00 o'clock, but I don't even know whether part of the officers or committees made this suggestion to the pickets. I don't know; there was no order of the union.

I did not understand from anyone that this meeting was for the purpose of making a decision as to whether the strike would continue.

When I got there, it was shortly before the deputy sheriff came in. I don't even think I was in front of the hall at

the time but there were photographers there I didn't even know; there were several of them. Finally somebody stated that a deputy sheriff wanted to come in. I heard a lot of shouting, "Keep them out," "Throw them out." Between [fol. 215] the regional director and myself, we were able to calm these fellows down, telling them—in essence we said the same thing: This fellow has a job, he has a duty, if he is there let him come in, we want to see what he wants. He was accepted into the hall, and he was rather nervous; I don't blame him. As I said before, I told him to take it easy and tell us what he wanted, which he did, and after that I read parts of the order. Because of the tremendous disorder in the hall I wanted to get the part off that they should resume work, and seeing no response or no motion—usually at a regular meeting when you read off something affecting the people, somebody would get up and make a motion to go back to work; no such motion came, in any effect. In fact, it was not asked that a motion should be in order. Some were coming in and going out when I went up there. It was a matter of finding out where everybody was; I guess that was the reason for the meeting. There was no business in an orderly way taken care of. After the meeting, we got together to figure out what could be done.

By the Court:

Q. Did you have any power to issue a call, calling off the strike or issue an order?

A. No, I have no power. According to the by-laws, my job is to call meetings and conduct meetings, and so forth; it's more or less an honorary job; see that the affairs of the union are taken care of. You have the executive board to recommend to the membership, and the governing body of the union is the membership. It states in the by-laws under [fol. 216] emergency conditions I can do things on the recommendation of the executive board.

Q. You are a member of the executive board?

A. As president, I'm an ex-officio member of all committees.

Q. Could you have called a meeting of the executive board that afternoon?

A. The executive board—the membership had voted to grant the power or right for the negotiating committee to set the hour of the strike, or words to that effect.

Q. You are a member of the negotiating committee?

A. That's right.

Q. Could you have called off the strike after that?

A. It took me three hours after that to round up the members.

Q. The negotiating committee could have called off the strike?

A. I doubt if the membership would have abided by it. They have no power; they have only power to recommend, and once they were out, I don't think they would even go back with a recommendation. Part of the same negotiating committee went around the Thursday morning after the agreement was tentatively agreed upon, and the fellows wouldn't go back then.

Q. Did you attempt to call a meeting of the negotiating committee after the service of the paper at the meeting?

A. I did. I delegated two people to go and round them up and tell them to be over at the Mayor's office. For some reason, they couldn't find them all. When they didn't show up—some did show up; we went out and rounded up the rest, [fols. 217-219] and met at the Federal Judge's office or chambers. It took that long because you appreciate the Gas Company is spread out. We have a plant over on 39th, 124th and Cleveland, 60th and Capitol, some at Solvay, 25th and St. Paul, some at the office, some at the Third Ward, some at the Third Ward plant; I didn't know where the people were. It took a bit of chasing around to round up nine members of the committee.

Q. Did you do that for the purpose of acting upon the court order?

A. That's right, we figured we could get them back to work if we could get management into good negotiations, and we figured having a prominent person prevail on the company to do that and sit in there, it would still start negotiations, so if we didn't complete it, we could call the membership and say, "Fellows, go back to work until this is settled because we are back in negotiations and believe we will get out of this in a good way."

[fols. 220-221] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 222] [File endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

NOTICE OF APPEAL BY UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA—Filed May 15, 1950

To Thomas E. Fairchild, Attorney General, Madison, Wisconsin; Miller, Mack & Fairchild, Attorneys at Law, 735 North Water Street, Milwaukee, Wisconsin; Clerk of the Circuit Court, Milwaukee County, Wisconsin:

Please take notice That the defendants, United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, Arthur St. John, Thomas Lansing and Alvin C. Fuhrman, and each of them, hereby appeals to the Supreme Court of the State of Wisconsin from that part of the judgment of the Circuit Court of Milwaukee County entered on the 19th day of April, 1950, adjudging them guilty of civil contempt.

Max Raskin, Attorney for Appellants.

[fols. 223-224] [File endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

WAIVER OF COST BOND—Filed May 15, 1950

The respondent, Wisconsin Employment Relations Board, hereby waives the undertaking for appeal costs as provided in Section 274.07 Wis. Statutes.

Wisconsin Employment Relations Board, by (S.) Beatrice Lampert, Attorney.

[fol. 225] In Circuit Court of Milwaukee County

[Title omitted]

Admission of Service—Filed May 25, 1950

Service of copy of Notice of Appeal of Wisconsin Employment Relations Board in the above entitled matter is hereby admitted this 18 day of May, 1950.

(S.) Max Raskin.

Copy.

[fol. 226] Service of copy of Notice of Appeal of Wisconsin Employment Relations Board in the above entitled matter is hereby admitted this 18 day of May, 1950.

(S.) Wm. F. Quick.

[fol. 227] Service of copy of Notice of Appeal of Wisconsin Employment Relations Board in the above entitled matter is hereby admitted this 18th day of May, 1950.

(S.) Miller, Mack & Fairchild, Attorneys for Defendants Milwaukee Gas Light Company, Glenn R. Chamberlain, B. T. Franck and P. J. Imse.

[fol. 228] Service of copy of Notice of Appeal of Wisconsin Employment Relations Board in the above entitled matter is hereby admitted this 18th day of May, 1950.

Fred J. Jaeger, Clerk, by (S.) Ray L. Dundas, Deputy Clerk.

Copy.

[fols. 229-232] [File endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

NOTICE OF APPEAL BY WISCONSIN EMPLOYMENT RELATIONS BOARD—Filed May 25, 1950

Filed Jun. 5, 1950. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

To Max Raskin, 606 W. Wisconsin Ave., Milwaukee, Wisconsin; William Quick, 606 W. Wisconsin Ave., Milwaukee, Wisconsin; Miller, Mack & Fairchild, 753 N. Water Street, Milwaukee, Wisconsin:

Please take notice that the plaintiff, Wisconsin Employment Relations Board, hereby appeals to the Supreme Court of the State of Wisconsin from that part of the judgment of the Circuit Court of Milwaukee County entered on the 19th day of April, 1950 dismissing the petition of said Wisconsin Employment Relations Board to punish for civil contempt Chester Walczak, Peter Lupo, Charles Nutting, Al Helf, Cy Hackert, Ray Jonas, Charles Bauer, Al Smidoch, Peter Shank, Dan Burns, Joe Seborn, Dan Kabosky, Joe Marquardt and Fred Stockfish.

Dated May 12, 1950.

Thomas E. Fairchild, Attorney General; Stewart G. Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General, Attorneys for Plaintiff.

[fols. 233-234] [File endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

WAIVER OF COST BOND—Filed May 15, 1950

Copy of Notice of Appeal in the above entitled action received this 10th day of May, 1950.

(S.) Miller, Mack & Fairchild, Attorneys for Milwaukee Gas Light Co., Glen R. Chamberlain, B. T. Frank and P. J. Imse, defendants. By (S.) J. G. Hardgrove.

[fol. 235] IN THE SUPREME COURT OF WISCONSIN

[Title omitted]

ARGUMENT AND SUBMISSION—October 5, 1950

And now at this day came the parties herein, by their attorneys, and this cause having been argued by William F. Quick, Esq., and Max Raskin, Esq., for the said appellants The United Gas, Coke and Chemical Workers of America et al., by Malcolm L. Riley, Esq., Assistant Attorney General, and Stewart G. Honeck, Esq., Deputy Attorney General, for the said appellant Wisconsin Employment Relations Board, and by J. G. Hardgrove, Esq., for the said defendants Milwaukee Gas Light Company et al., and submitted, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

[fols. 236-237] IN SUPREME COURT OF WISCONSIN

WISCONSIN EMPLOYMENT RELATIONS BOARD, Respondent and Appellant,

vs.

MILWAUKEE GAS LIGHT COMPANY, GLEN R. CHAMBERLAIN, President, B. T. Frank, Vice President, P. J. Inse, Secretary-Treasurer, and Chester Walczak, Defendants,

THE UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, DISTRICT 7, LOCAL UNION 18, Arthur St. John, Thomas Lansing and Alvin C. Fuhrman, Appellants and Respondents. (Two notices of appeal)

JUDGMENT—November 8, 1950

This cause came on to be heard on appeals from the judgment of the Circuit Court of Milwaukee County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the Circuit Court of Milwaukee County, in this cause, be, and the same is hereby, affirmed.

Justice Fairchild took no part.

[fol. 238] IN SUPREME COURT OF WISCONSIN

WISCONSIN EMPLOYMENT RELATIONS BOARD, Respondent and Appellant,

v.

MILWAUKEE GAS LIGHT CO., et al., Defendants:

UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, et al., Appellants and Respondents

OPINION—November 8, 1950.

Appeal from a judgment of the circuit court for Milwaukee county: Otto H. Breidenbach, Circuit Judge. *Affirmed.*

This is an appeal from a judgment, entered April 19, 1950, adjudging the defendants, United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O. (hereinafter referred to as Union), Arthur St. John, Thomas Lansing, and Alvin C. Fuhrman, guilty of contempt for violation of an order entered October 5, 1949, and imposing a fine of $250 as to each; and the [fol. 239] plaintiff, Wisconsin Employment Relations Board, cross-appeals from that portion of the judgment adjudging Chester Walczak and thirteen other persons not guilty of contempt for violation of the October 5, 1949 order.

This action was begun by the Wisconsin Employment Relations Board (hereinafter referred to as Board) on October 5, 1949, to enforce the provisions of subch. III of ch. 111, Stats., known as the public utility anti-strike law.

On October 5, 1949, the circuit court for Milwaukee county entered an order requiring the defendants to show cause on October 7, 1949, why temporary relief asked by the Board should not be granted, and directing the Union, St. John, Walczak, and Lansing, pending the hearing, "to absolutely desist and refrain from calling a strike, going out on strike or causing any work stoppage or slowdown which would cause an interruption of the service of the Milwaukee Gas Light Company or the Milwaukee Solvay Coke Company and from instigating, inducing, conspiring with or encouraging any strike, slowdown or work stoppage which would cause interruption of such service, and from picketing or causing to be picketed the premises of the Milwaukee Solvay

Coke Company (a subsidiary supplying gas)." It was further ordered that the Union, St. John, Walczak, and Lansing "take immediate steps to notify all employees called out on strike to resume service forthwith."

On October 7, 1949, the parties appeared pursuant to the order of October 5, 1949, and then stipulated "that the temporary restraining order should be continued until the final disposition of the issues upon their merits."

[fol. 249] On petition of the Board, an order was entered on October 10, 1949, requiring the Union, the individual defendants, and certain members of the Union, including Alvin C. Fuhrman, to show cause on October 24, 1949, why they should not be punished as and for a civil contempt in failing to obey and in disobeying the order of October 5, 1949.

After trial the aforesaid judgment was entered. The trial court in its decision, findings of fact, conclusions of law, and judgment found Thomas Lansing to be in contempt. However, through inadvertence, the judgment also provided that the petition of the Board as to Thomas Lansing be dismissed. He has appealed herein and therefore has considered himself as having been found in contempt. The inconsistency in the judgment was recognized by all parties as an error.

Other material facts will be stated in the opinion.

[fol. 241] MARTIN, J.:

Prior to October 5, 1949, the membership of the Union had authorized the negotiating committee to call a strike and on October 4, 1949, the negotiating committee, consisting of defendants, Arthur St. John, Thomas Lansing, and Alvin C. Fuhrman, ordered the strike to commence at 6:00 a. m., October 5, 1949.

At 11:00 a. m., the public was advised to curtail consumption of gas and an appeal to consumers of gas was made to shut off the service; the steam pressure dropped to zero in the boiler room and no further pumping could be done with the main pumping facilities; the fires had to be pulled from the boilers reducing the steam pressure, and all facilities had to be stopped; a minimum pressure in the distribution system was kept in order that the air would not get into the mains so as to prevent any explosions due to the mixture of gas and air in the distribution system; the sendouts dropped to twenty-five per cent of what they had been

previously. Low pressure in the system created a dangerous condition fraught with the possibility of infinite injury to the public. The public was advised by radio broadcasts and through the newspapers to shut off appliances and to shut off the service at the meter. The service was not resumed until October 6, 1949.

The restraining order was signed by the court at 12:55 p. m., and was served by the deputy sheriff upon the Union by serving its president, Arthur St. John, and upon him personally, and upon Chester Walczak, international representative, at a meeting of a large group of the members of the Union at Bohemian hall, at about 2:00 p. m., October 5th. Chester Walczak and Arthur St. John told the [fol. 242] meeting the papers served were an order to go back to work, but no statement was made calling the men back to work.

A picket line was maintained at the premises of the Coke Company from 2:00 or 3:00 p. m. and continued there until about 9:30 p. m., on Wednesday, October 5, 1949.

The Coke Company is a wholly-owned subsidiary of the Gas Company. In October, 1949, the Coke Company supplied about fifty-five to sixty per cent of the gas distributed by the Gas Company. Because of the relationship between the Coke Company and the Gas Company, the Coke Company is a public utility employer and the public utility anti-strike law applies to it.

The present proceeding does not relate back to the action of the Union voting the strike, or to the act of the negotiating committee calling the strike. It relates to matters occurring subsequent to the signing of the order and the service of same at about 2:00 p. m., on October 5th.

The order required the Union, St. John, Walczak, and Lansing to "take immediate steps to notify all employees called out on strike to resume service forthwith." Because of the seriousness of the situation already referred to resulting from the partial or complete stoppage of the essential service of furnishing gas to the public, the order required immediate compliance.

On Arthur St. John, president of the Union, a member of the executive board and of the negotiating committee, Thomas Lansing, a member of the executive board and the negotiating committee, and Alvin C. Fuhrman, vice-president of the Union and a member of the executive board and [fol. 243] negotiating committee, was placed the responsi-

bility by vote of the Union to call the strike and upon them rested the responsibility, after the service of the restraining order, to revoke the call and comply with the order of the court.

An all-night conference between Union and Gas Company officials, in which the mayor of Milwaukee and the judge of the United States district court of the eastern district of Wisconsin participated, was held on October 5th and an agreement was reached. The strike ended at 8:00 a. m., October 6th. The defendants contend that a call to the members of the Union to return to work would have been ineffectual; that they knew beyond any reasonable doubt that any order, request, or recommendation of theirs would under the circumstances then existing, have no effect whatever in getting the men back to work. They assert that there was no contumacious or wilful disobedience of the order because they immediately took action and arranged a conference in which the strike was settled, and there was only a few hours' delay in achieving the main objective of the order, which was to end the strike and get the production of gas and its distribution to consumers back to normal. These measures are not a justification for their failure to comply with the requirements of the court order.

It is true that within twenty hours the strike was settled by negotiations. However successful the negotiations may have been, it does not purge the defendants. The language of the court order is direct and unambiguous. It commanded something to be done—"take immediate steps to notify all employees called out on strike to resume service forthwith." This the defendants ignored.

[fol. 244] The acts complained of which violated the injunction constituted contempt of court and are held to have injured the Board. See *Wisconsin E. R. Board v. Allis-Chalmers W. Union* (1946), 249 Wis. 590, 25 N. W. (2d) 425.

Defendant Chester Walczak at the time in question was a regional director of the international union, but he was not a member of the negotiating committee. The immediate duty to recall the strike did not rest upon him as it did upon the members of the negotiating committee. It does not appear that his failure to disassociate himself from the continuance of the strike was an act of wilful and contumacious civil contempt.

We have carefully reviewed the evidence relating to the other thirteen union members who were dismissed in this

action. No useful purpose would be served in discussing each individually. They were either present at the meeting at the Bohemian hall or in the picket line at the Coke Company when the court order was served. The evidence does not so clearly and sufficiently establish their knowledge of the scope and requirements of this order so as to overrule the finding of the trial court. The members of the negotiating committee did not sufficiently inform them of the requirements. This finding by the trial court is a reasonable deduction from the testimony produced and must stand. The court's finding is of great weight. Its conclusion after seeing the witnesses and hearing their testimony cannot be disturbed.

The Union asserts that subch. III of ch. 111, Stats., conflicts with the Federal Labor Management Relations Act of 1947, and violates the state and federal constitutions.

The constitutionality of the public utility anti-strike law was questioned in a previous action in this court. *United G., C. & C. Workers v. Wis. E. R. Board* (1949), 255 Wis. 154, [fol. 245] 38 N. W. (2d) 692. The law has been held to be a proper legislative enactment.

The Union relies on *International Union of U. A. A. & A. v. O'Brien* (1950), 339 U. S. 454, 94 L. ed. 659 (Adv. Op.) [same case below, 325 Mich. 250, 38 N. W. (2d) 421] wherein the constitutionality of the strike-vote provision of the Michigan labor mediation law was before the court. The appellants struck against the Chrysler corporation in May, 1948, without conforming to the prescribed state procedure. The United States Supreme Court stated that even if some state legislation in this area could be sustained, the particular statute before it could not stand for it conflicts with the federal act. It was explicitly pointed out that Congress had considered in enacting the federal act, and expressly rejected, on its merits, the proposition that a strike vote ought to be prerequisite of a strike.

The lower court considered that the state police power could operate even though some of the members of the same bargaining unit were employed in Chrysler plants in California and Indiana, as well as Michigan. The United States Supreme Court is bound by the state court's interpretation of the state statute. As so interpreted, it was held that the Michigan provision conflicted with the exercise of federally protected labor rights. The court said that the regulation

of the right to peacefully strike for higher wages had been preempted by Congress.

The above case, however, relates to a private corporation whereas the instant case involves a public utility engaged in the furnishing of illuminating and heating gas to the general public in the state of Wisconsin. The total franchise area served exceeds five hundred square miles. The total population of the area is nearly eight hundred thou- [fol. 246] sand. The number of customers exceeds two hundred thousand, all within the state of Wisconsin. Congress has no power to question the states' control over their utilities. That power rests with the states. The states exercise such powers on the theory that the utilties are state agencies. They perform functions which the states might perform directly rather than through agencies to which they delegate their own powers. Under a proper interpretation of the federal act, the state is still sovereign in the field covered by the public utility anti-strike law. The federal act makes provision for national emergencies, but it does not and cannot legislate in the field of local emergencies.

The *O'Brien case, supra,* was considered by this court in defendant's motion for rehearing in *United G., C. & C. Workers v. Wis. E. R. Board, supra,* wherein the constitutionality of the public utility anti-strike law was first questioned.

In the case of *In Re New Jersey Bell Telephone Co.* (October 2, 1950), 26 LRRM 2585, it was held that the New Jersey public utilites disputes act, which forbids those strikes against public utilities which might imperil health and welfare, does not conflict with provision in Labor-Management Relations Act which establishes emergency-strike procedure for disputes affecting national safety and health, since federal law does not authorize federal government to intervene in emergencies of state-wide proportions only and there is nothing in federal law forbidding intervention by states in such situations. The telephone company relied on the *O'Brien Case, supra,* and the New Jersey Supreme Court stated:

> [fol. 247] "In that case the constitutionality of the strike vote provision of the Michigan labor mediation law was questioned. The Union had struck against a private industrial organization, engaged in interstate

commerce, without conforming to the prescribed state procedure; the state procedure differed from that provided in the Federal legislation, and the court decided that because of the conflict the state statute was unconstitutional. The court said that the regulation of the right to peacefully strike for higher wages had been preempted by Congress, but the case being decided by the court involved a statute regulating the right to strike against private industry. It was not a statute such as the New Jersey statute, in which a state, in the exercise of its sovereignty, seeks to maintain without interruption the supply of services, considered essential to the welfare and health of its people, being furnished by a public utility, operating under a franchise by the state, whose services furnished are primarily intrastate. It is significant that in the O'Brien case, supra, the court said 'Even if some legislation in this area could be sustained, the particular statute before us could not stand. For it conflicts with the Federal Act.' Our examination of the Federal Act discloses no provision therein which prohibits a state, in the exercise of its police power, from protecting itself against strikes or lockouts in public utilities which would imperil the health and safety of its citizens. It is noted that the Labor-Management Relations Act, 1947, in Sections 206-210, authorizes the Federal Government to proceed, pursuant thereto, to enjoin threatened strikes or lockouts which, if permitted to occur, might imperil the national health or safety. We find no authority in the Federal Act for the Federal Government to so act to prevent similar emergencies which may be state-wide only and which may be of insufficient magnitude to imperil the national health and safety. Since we find no provision in the Federal Act prohibiting a state from enjoining threatened strikes or lockouts in public utilities which, if permitted to occur, might imperil the health, welfare and safety of its people in an emergency of state-wide proportions only, since the Federal Act does not authorize the Federal Government to act in such cases, and since the 'intention of Congress to exclude the states from exerting their police power must be clearly manifested', Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740, 86 L. ed. 1154 [10 LRR Man. 520] (1942) we con-

clude that the right of the states to prohibit strikes or lockouts in this sphere has not been preempted by Congress, and that the O'Brien case, supra, is inapplicable to the present situation."

[fol. 248] We concur with the New Jersey Supreme Court that the power still resides in the states in a proper case to prohibit strikes notwithstanding the existing federal legislation. We consider this a "proper case" within the foregoing statement and find nothing in the *O'Brien Case, supra*, of a dissuasive nature. We hold that the public utility anti-strike law does not conflict with any federal act.

By the Court.—Judgment affirmed.

[fol. 249] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 250] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 438

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed December 11, 1950

The petition herein for a writ of certiorari to the Supreme Court of the State of Wisconsin is granted. The case is transferred to the summary docket and assigned for argument immediately following No. 330, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America vs. Wisconsin Employment Relations Board.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.